

PETITIONER:  
STATE OF BIHAR

Vs.

RESPONDENT:  
RAMNATH PRASAD & ORS.

DATE OF JUDGMENT: 09/12/1997

BENCH:  
G.T. NANA VATI, V.N. KHARE

ACT:

HEADNOTE:

JUDGMENT:

### J U D G M E N T

NANA VATI, J.

These appeals by special leave are filed by the State of Bihar against the judgment and order of the Patna High Court in Criminal Appeal Nos. 493 of 1980 and 20 and 49 of 1981. The High Court allowed the three appeals, set aside the order of conviction and sentence passed by the Court of Additional Sessions Judge, Sitamarhi in Sessions Trial No. 79 of 1979/15 of 1980 and acquitted the accused of all the charges levelled against them.

The incident which led to the trial of the three respondents took place in village Bairgania on 9.2.1979 at about 8.30 p.m. There is a Power House at Bairgania. It was lying closed since a long time and in order to see that it started again, the people of Bairgania had organised a relay fast near the Rest House of that Power House since 28.1.1979. The relay fast was to continue for 24 hours everyday and on 9.2.1979 it was the turn of Bishwanath Prasad Rajgaria (deceased), Bigu Ram, Ram Narayan Prasad, Ram Gopal Rajgaria and Jagannath Prasad to sit there and observe fast. AT about 8.30 p.m. on that day accused Rajdeo (respondent No.2) reached that place. he was soon followed by accused Ramnath (respondent No.1). They sat for some time with the persons who were on fast and then accused Ramnath took out a small packet from his pocket and offered powder like substance to Bishwanath Prasad and told him that it was 'prasad' from Varanasi. As Bishwanath Prasad and others were observing fast they declined to take it by saying that it would not be proper to eat anything as they were on fast. But Rajdeo persuaded them to take it by stating that it was 'prasad' of God and by taking it, it cannot be said that the 'prasad' of God and by taking it, it cannot be said that the fast was broken. Ramnath then gave the 'prasad' to Bishwanath Rajgaria, Bigu Ram, Ram Narayan, Ram Gopal and Jagannath. While the 'prasad' was being given to those person Hari Narayan and Bishwanath Chaudhary also came there. They requested Ramnath to give 'prasad' to them. Ramnath, therefore, gave 'prasad' to them also. After two or three minutes accused Rajdeo left that place. Ramnath continued to sit there. After about 15 to 20

minutes all the seven persons who has taken 'prasad' felt uneasiness and giddiness and had difficulty in breathing. Bishwanath Prasad Rajgaria, therefore, enquired from Ramnath as to what he had given to them, Ramnath did not reply and left that place. Those persons started vomiting and purging and their condition started deteriorating. So, Dr. Vishwanath Prasad was called. Even after he treated them, their condition did not improve and, therefore, two other doctors were went for. In spite of the treatment given by the doctors condition of those persons did not improve. Bishwanath Prasad Rajgaria died at about 3.30 a.m. The other six affected persons were removed to Sitamarhi Hospital and with better treatment there they survived. Dr. Kameshwar Prasad had sent information to the police station regarding the condition of those seven persons and, therefore, the police came to the Rest House at about 5 a.m. and recorded the complaint of Chandradeo Prasad alias Raj Guru. In the complaint he stated he was suspecting that Rajdeo and Ramnath had deliberately and knowingly administered some poisonous substance to those persons and, therefore, Bishwanath Prasad Rajgaria had died and others had become ill. A case was registered on basis of the said complaint. After completion of the investigation and filing of the charge - sheet the three accused were charged and tried for committing the murder of Bishwanath Rajgaria and for attempting to commit the murders of Bigu Ram, Ram Narayan, Ram Gopal Rajgaria, Hari Narayan and Bishwanath Chaudhary by administering poison to them. Accused Ramnath was charged under section 302 IPC and also under sections 307 and 328 IPC. Rajdeo was charged under sections 302, 307, 328/34 and 302/109 IPC. Banwari Lal (respondent No.3) was charged under section 120B IPC for having entered into a conspiracy with the other two accused in pursuance of which poisonous substance was administered to the deceased and six others. The accused totally denied their involvement in the incident. They also led evidence in defence.

In order to prove its case the prosecution had examined the following eye-witnesses: Chandradeo, the informant (PW.2), Ram Gopal Rajgaria (PW.5), Kamal Prasad Jaiswal (PW.6) and Bigu Ram (PW.9). Out of the persons who were on relay fast the prosecution had tendered Jagannath (PW.32) and Ram Narayan Prasad (PW.34) for cross-examination. Others were not examined on the ground that they were won over by the defence. The prosecution had also tendered Hari Narayan (PW.3) for cross-examination. The prosecution had examined Dr. Ashok Kumar Gupta (PW.13) and Dr. Vishwanath Prasad (PW.31) who had treated the affected person at Bairgania. The prosecution had also examined Kamal Prasad Jaiswal (PW-6) and Kodai Shah (PW.28) who were present when Chandradeo gave his complaint and who had also signed the same. One Dharmnath Prasad (PW.27) was examined to prove that he was told by Bishwanath Chaudhary and Hari Narayan that accused Ramnath had given 'prasad' to them. Other corroborative evidence was also led by the prosecution but it is not necessary to refer to the same. On the basis of the medical evidence and the reports regarding chemical examination of blood, vomit and stool the trial court found that Bishwanath Prasad Rajgaria, Hari Narayan and Bigu Ram were administered glycosides of oleander (kanar) and that oleander is a highly poisonous substance. Though the chemical examination reports of the other affected persons did not show presence of oleander, on the basis of the medical evidence it was held that they had also suffered effects of eating a poisonous substance. It also held that the death of Bishwanath Prasad Rajgaria was due to the

poison given to him. The trial court disbelieved the evidence of Dharamnath Prasad (PW 27) who during his cross-examination stated that when he had gone to the Rest House at about 3.30 p.m. he had seen the persons sitting on relay fast eating 'Chura' and 'Bhuja' and at that time Hari Narayan was present. This version was suggested to some of the prosecution witnesses also. It was disbelieved on the ground that Dharam Nath being a cousin of Rajdeo Prasad wanted to help the accused as was evident from the fact that he had not so stated in his police statement and had falsely denied that he was examined by the police. His evidence was disbelieved also because of Hari Narayan in his evidence has categorically stated that he and Bishwanath Chaudhary had gone to the Rest House at about 8.30 P.M. and he was not at all cross-examined on this point. Moreover, there was no evidence whosoever to support the version that the persons who were on relay fast had taken 'Chura' and 'Bhuja' at about 3.30 p.m. Though no motive could be established by the prosecution the trial court held that the evidence of PWs 2.5, 6 and 9 was sufficient to establish that Ramnath had given the 'prasad' that Rajdeo had persuaded the persons sitting on relay fast to eat it. The trial court further held that Ramnath had given poisonous substance with an ulterior motive and accused Rajdeo had definite knowledge about it. The trial court also believed the corroborative evidence given by Kailash Mahto and Dr. Vishwanath Prasad (PW.31) who have stated that when they had enquired from Bishwanath Rajgaria as to what was the cause of his ailment Bishwanath Rajgaria had told them that after he took 'prasad' given by Ramnath the symptoms of giddiness etc. had developed and that Rajdeo had insisted that they should take that 'prasad'. The trial court rejected the contention that the evidence of Dr. Vishwanath Prasad should not be believed because the other doctors had not so stated in their evidence for the reason that the other doctors were not asked any question on that point. Even dharamnath therefor had stated that at about 3.30 p.m. the persons on relay fast had taken 'Chura' and 'Bhuja', admitted that he had gone to the Rest house at 9 p.m. and when he had enquired what had happened to Bishwanath Prasad Rajgaria and others he was told that Ramnath had given some 'prasad' to them and thereafter their condition had become serious. The trial court also relied upon the circumstance that soon after the incident accused Ramnath and Rajdeo had disappeared from the village. On the basis of all this evidence the trial court came to the conclusion that complicity of Ramnath and Rajdeo was established beyond doubt by the prosecution. The charge against Banwari Lal was held proved on the basis of the evidence of Pws. 11, 33, 40, 41 and 42. The trial court, therefore, convicted Ramnath and held him guilty under sections 302, 307 and 328 IPC. It convicted Rajdeo under Sections 302 read with sections 34 and 109, 307/34 and 328/34 IPC. Banwari Lal was convicted under section 120B IPC.

All the three respondents challenged their conviction before the High Court by filing separate appeals. The High Court held that there was practically no evidence against banwari Lal and the three circumstances which were relied upon for establishing the charge of conspiracy against him were not sufficient to lead to that conclusion. It held that the only circumstance proved against Rajdeo was that he had included the fasting people to take 'prasad' and that was not sufficient to establish the charge of abetment or sharing of common intention as there was nothing to show that he had any knowledge that what was offered by Ramnath

was a poisonous substance. With respect to Ramnath it held that there was no motive for him to give poison either to Bishwanath Prasad Rajgaria or to any other person. Moreover the name of Ramnath or any other accused was not disclosed to any authority including the police even though the police station was only one kilometre away. Till 5 a.m. the names of Ramnath and others were not disclosed even to the doctors who were treating to the affected persons right from 9.30 p.m. The High Court also pointed out that Dr. Kameshwar Prasad (PW.30) had himself gone to the police station and had given information regarding the incident but Ramnath and other accused were not named as accused. The High Court, therefore, held that the names of the accused were introduced by the informant with an oblique motive. It also held that it was improbable that accused Ramnath would have given a poisonous substance to Bishwanath Chaudhary who was his servant and Ram Narayan Prasad who was his relative. It also held that the extent of vomiting and purging made it doubtful that the affected persons had not taken anything from morning till about 8.30 p.m. and, therefore, it was not possible to say that what had happened to them was because of taking the 'prasad' given to them by Ramnath. The High Court also held that the fasting people always remain surrounded by a few others and, therefore, it was not probable that Ramnath would have distributed 'prasad' to them in their presence. It, therefore, held that he was entitled to the benefit of doubt. The High Court, therefore, allowed the appeals and acquitted the three accused.

The State of Bihar, therefore, applied for special leave to file an appeal against the judgment and order of the High Court. This Court granted leave to appeal against Ramnath Prasad and Rajdeo Prasad only. Special leave petition against respondent No.3 Banwarilal was dismissed. As regards respondent No.2 Rajdeo, the learned counsel for the State was not able to point out any other evidence except the evidence of PWs.5, 9, 32, 34 and 35 which only proves that he had come to the Rest House a few minutes after Ramnath Prasad had gone there and that when the persons sitting on fact were reluctant to take the 'prasad' he had told them that they should take it as it was 'prasad' of God and by taking it fast cannot be said to have been broken. Nothing else was alleged against him. Even if this evidence is believed it does not establish that he had shared any criminal intention with Ramnath. It cannot be said with reasonable certainty that he knew that what was given by Ramnath was poison. In our opinion, the view taken by the High Court is quite reasonable and does not call for any interference.

We will now deal with the reasons given by the High Court for acquitting Ramnath. They can be summarised as under:

- (1) Ramnath had no motive to give poison to those persons.
- (2) Ramnath's name was not disclosed to anyone till 5 a.m.
- (3) Ramnath would not have given the poisonous substance to Bishwanath Chaudhary and Hari Narayan as they were his servant and relation respectively and this circumstance indicated that the whole version of the witnesses was improbable.
- (4) Besides the persons sitting on relay fast there were other persons also and, therefore, it was not believable that Ramnath would go there and give poisonous substance to the persons sitting on relay fast in their presence
- (5) The quantity of vomit, stool and urine was excessive

and that indicated that the persons sitting on relay fast had taken some food and plenty of water earlier and, therefore, it was not possible to say that the symptoms of poisoning were because of eating 'prasad'.

- (6) If really Ramnath had given the poisonous substance knowingly to the persons sitting on fast then he would not have remained there for some time after giving it.

We find that the second reason given by the High Court is not factually correct. The High Court was not right in observing that the three doctors namely Vishwanath Prasad (PW.31), Kameshwar Prasad (PW.30) and Ashok Kumar Gupta (PW.13) were at the Rest House from 9.30 p.m. onwards. Dr. Kameshwar Prasad (PW.30) was working as Head of the Department of Forensic Medicine, S.K. Medical College at Muzaffarpur. He had conducted the post-mortem examination of the dead body of Bishwanath Prasad Rajgaria on 10.2.1979. He had not at all gone to village Bargania on 28.1.1979. He had not at all gone to village Bargania on 28.1.1979 to treat any of those affected persons. The first doctor who had reached the Rest House was Dr. Vishwanath Prasad. He has stated in his evidence that while he was sleeping in his quarter one Dharamnath Prasad (PW.27) woke him at about 11.15 p.m. and had requested him to go to Rest House where condition of seven persons was serious. He has stated that after going there he had started treating them and while treating Bishwanath Prasad Rajgaria he had inquired from him as to what had happened and he was told that it was because of eating 'prasad' given by Ramnath at about 8.30 p.m. He has further stated that as condition of the patients was becoming serious, he had sent for other doctors for assistance. Dr. Ashok Kumar Gupta (PW.13) had stated that while he was sleeping Dr. Kameshwar Thakur, In-charge of Medical Officers, Hospital of Bargania woke him up and told him to accompany to the Rest House as the persons who were sitting on relay fast were seriously ill. They had reached there at about 2.30 a.m. From the symptoms he diagnosed that it was a case of poisoning. However, in his cross-examination he stated that "none told us about the poisoning, nor any one told me the name of anybody" and this answer was heavily relied upon by the High Court for its finding. From the evidence of these two witnesses it becomes quite clear that they had not reached the Rest House at 9.30 p.m. and, therefore, it can be said that the High Court has misread that part of their evidence. Dr. Vishwanath Prasad had reached the Rest House at about 11.30 p.m. and Dr. Ashok Kumar Gupta and Dr. Kameshwar Thakur had reached at about 2.30 a.m. Dr. Kameshwar Thakur was not examined but the certificate issued by him supports the version of Dr. Ashok Kumar Gupta as it is stated in that certificate that he was informed about the incident at about 2 a.m. The evidence of Dr. Vishwanath Prasad further establishes that he was informed by Bishwanath Rajgaria that Ramnath had given 'prasad' to him, and developed. By the time the other two doctors had reached the rest House, condition of the affected persons had become serious and some of them had lost consciousness. They were busy in giving treatment. If under these circumstances, they did not inquire and nobody told them as to who had given the poisonous substance, it cannot be said that even the affected persons did not know the culprit. Kailash Mahto, who was the Police Constable at Bargania Police Station, has stated that when he had returned from the police station to the Rest House at about 11 p.m. he had seen seven persons vomiting and passing stools and he was told that all that had happened after eating 'prasad' given by Ramnath. It is,

therefore, not correct to say that name of Ramnath was not disclosed as the person responsible till 5 a.m. Thakur Prasad Singh (PW 46) was the In-charge Officer of the Police Station, Bairgania. On being informed by Fr. Kameshwar Thakur about the incident he had proceeded to the Rest House at 5 a.m. There he recorded Fardbeyan of Chandradeo Prasad. In view of their conditions, the persons who were ailing could not have gone to the police station. Doctors were also busy in treating them. The circumstances were such that not approaching the police till the ailing persons were sent to the hospital cannot lead to an inference that nobody knew till 5.00 a.m. who was responsible for what had happened.

The reason given by the High Court for treating the version of the prosecution witnesses as improbable is also not correct. What the High Court has failed to appreciate is that there was no evidence to show that when the 'prasad' was given by Ramnath other persons except those named were there. So far as Bishwanath Choudhary and Hari Narayan are concerned they were not offered 'prasad' by Ramnath but it was given to them when they had demanded it. Ramnath could not have said not to them at time as that would have immediately raised a suspicion. These relevant aspects have not been considered by the High Court.

The fifth reason given by the High Court is also not sustainable. Merely because no witness had positively stated that the doctors had made them drink water to wash their bowels it was not proper to jump to the conclusion that possibly the persons sitting on relay fast had consumed some food and plenty of water earlier than 8.30 p.m. The evidence of Doctors Vishwanath Prasad and Ashok Kumar Gupta discloses that all the three doctors were continuously giving treatment to the patients and it was most likely that sufficient water was given to them to wash their bowels. The evidence of Kamal Prasad Jaiswal (PW.6) also discloses that glucose water was also given to them as a part of the treatment. It was, therefore, not reasonable to hold that the symptoms of greediness, vomiting and passing of stool were not the result of eating the Prasad given by Ramnath. It was not put to any of the doctors that intake of a small quantity of oleander would not have the effects as were noticed in case of those affected persons.

Thus the findings recorded by the High Court are based upon misreading of the evidence or are unreasonable. The High Court was not justified in discarding the evidence of eye-witnesses on the ground that their version was improbable. The High Court also failed to appreciate that there was no reason for PWs. 2, 5, 9, 32 and to depose falsely against Ramnath.

We are of the opinion that the High Court was wrong in holding that the prosecution has failed to establish that Ramnath had given by way of 'prasad' the poisonous substance to those five persons who were on relay fast and also to Bishwanath Chaudhary and Hari Narayan and that because they ate it Bishwanath Prasad Rajgaria died and others had suffered harm as stated above.

The next question to be considered is what offence Ramnath can be said to have committed. The prosecution has not been able to establish any motive strong enough to induce Ramnath to kill any of those five persons even if some enmity with Bishwanath Prasad Rajgaria is assumed. He did not have any enmity with others. If really his intention was to kill them he would not have given that poisonous substance so openly and in presence of others. It is, therefore, not possible to infer from the facts and circumstances of the case that Ramnath had given the same to

Bishwanath Prasad with any intention to cause his death. However, he ought to have known that as what he had given to Bishwanath Prasad Rajgaria and others was a poisonous substance, it was likely to cause grievous hurt and even death.

We, therefore, hold him guilty for committing the offence punishable under Sections 304 Part-II IPC for causing the death of Bishwanath Prasad Rajgaria and for the offence punishable under Section 326 IPC for causing grievous hurt to Bigu Ram, Ram Narayan Prasad, Ram Gopal Prasad Rajgaria, Jagannath Prasad and Hari Narayan.

We, therefore, allow Criminal Appeal No. 357 of 1987, set aside the judgment and order passed by Patna High Court in Criminal Appeal No. 49 of 1981 and convict respondent Ramnath for the offence punishable under Sections 304 Part-II and 326 IPC. For the offence punishable under Section 304 Part-II he is ordered to suffer rigorous imprisonment for five years. For the offence punishable under Section 326 he is ordered to suffer rigorous imprisonment for four years in respect of each of the persons to whom hurt was caused viz. Bigu Ram, Ram Narayan Prasad, Ram Gopal Prasad Rajgaria, Jagannath Prasad and Hari Narayan. We direct that all the sentences shall run concurrently.

Criminal Appeal No. 358 of 1987, filed against Rajdeo, is dismissed.