

PETITIONER:
MAHENDRA RAI

Vs.

RESPONDENT:
MITHILESH RAI & ORS.

DATE OF JUDGMENT: 13/12/1996

BENCH:
M.M. PUNCHHI, FAIZAN UDDIN

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

Faizan Uddin, J.

1. These two sets of appeals one by the informant Mahendra Rai, cousin brother of the deceased and another by the State of Bihar are directed against the judgment and order of the High Court of Patna passed in Criminal Appeal No. 272 and 307 of 1988 reversing the judgment and order passed by the Additional Sessions Judge (I) Patna at Barh dated 20.5.1988 in Sessions Trial No. 138/1986 whereby the respondent No. 1 Mithilesh Rai was convicted under Section 302 for brutal murder of Arun Rai and sentenced to capital punishment, while the respondents 2 and 3, namely, Madan Rai and Raj Naresh Rai were convicted under Section 302 read with Section 109 IPC and sentenced to undergo life imprisonment and other two co-accused, namely, Rajendra Rai and Ram Das Rai were acquitted.

2. The prosecution case was that in the morning of 17.5.1985 there was some dispute altercation between the deceased Arun Rai, a boy aged about 12 years and the accused respondent No. 2 Madan Rai on the price of milk. The deceased Arun was insisting to sell the milk at the rate of Rs. 5/- per litre while the respondent Madan Rai was not agreeable for the same. This dispute infuriated the accused respondent No. 3 Raj Naresh Rai as well as the acquitted accused Ram Das Rai and Rajendra Rai who according to the prosecution instigated the accused respondent No. 1 and 2, Mithilesh Rai and Madan Rai to kill Arun Rai at any cost. It is alleged that on the same day at about 12 noon when deceased Arun Rai was sleeping on a cot under a mango tree in an orchard near his house, the accused respondent No. 1 armed with a Kakut, alongwith his cousin respondent No. 2 Madan Rai went there. Accused madan Rai caught hold head of Arun and the respondent Mithilesh Rai gave a heavy blow by a Kakut (chaff-cutter) on the neck of Arun Rai. The incident was seen by Mahendra Rai, PW 11, Jagdish Rai, PW 7, Jageshwar Rai, PW B, Kalicharan Rai, PW 9 and other persons who also tried to apprehend the culprits but since they threatened them by saying that in case they proceeded further they would also meet the same fate. Thereafter the accused persons ran away towards their house. Victim Arun

Rai died on the spot. According to the prosecution respondent no. 3 Raj Naresh Rai is said to have handed over the weapon of offence to the respondent No. 1, Mithilesh Rai sometime before the occurrence, while the two other acquitted accused are held to have instigated and abetted their sons, respondents 1 and 2 to commit the said murder sometimes in the morning on the date of occurrence.

3. At about 3.30 PM on the date of occurrence Kailash Prasad, PW 13, Officer Incharge of Police-Station Athmalgola received information about the commission of said murder, he, therefore, after making an entry in the Station Diary proceeded to village Dashinichak with a police party where he recorded Fardbeyan, Ext. 10 of Mahendra Rai, PW 11, the cousin of the deceased at about 5.30 PM on the basis of which a formal FIR Ext. 12 was drawn under section 302/34 IPC against the 3 respondents and the acquitted accused. He prepared an inquest report Ext. 9 at the place of occurrence and seized bloodstained earth. The dead body of the deceased was sent to the hospital, Barh.

4. In the Barh Hospital, Dr. Shankar Prasad Deokuliar PW 6 performed an autopsy on the dead body of Arun Rai on 18.5.1985 who as per his post mortem report found a clean cut wound on the right side of the neck of the deceased extending from 1" left of midline beyond the lower angle of the mandible on the right side of the dimension 6" x 3", going deep up- to the vertebra. The doctor found an ellipsical clean cut wound of the size of 3/4" x 1/2" which was communicating to the aforesaid injury and was just to the left to that injury. He also found muscle, corpid vessels, trachea and desophaous severed. The doctor stated that both the said injuries were antemortem in nature and in his opinion the death was caused due to bleeding as a result of severing of corpid vessels. According to the opinion of the doctor both the aforesaid injuries could be possible even by a single blow by a Kakut (chaff-cutter).

5. The three respondents as well as the two acquitted accused denied the guilt and pleaded false implication. The respondent No. 1 and the two acquitted accused Rajendra Rai and Ram Dad Rai took the plea of alibi. Respondent No. 1 Mithilesh stated that he was ill and was under the treatment of Dr. Mahato, DW 1 and was an indoor patient in his clinic from 16.5.1985 to 19.5.1985. They adduced defence evidence in support of their plea. The trial court did not believe the morning incident regarding the altercation on the price of milk. The trial court, however, rejected the defence plea and the defence evidence as unreliable and relying on the prosecution evidence convicted the respondent No. 1, Mithilesh Rai under Section 302 for committing the murder of Arun Rai and awarded death sentence and made a reference to the High Court for confirmation thereof as required by Section 366 (1) Cr.P.C. The respondent No. 1 Madan Rai and respondent No. 3 Raj Naresh Rai were also convicted under Section 302 read with Section 109 IPC for aiding and abetting the commission of an offence of murder by Mithilesh. The trial court, however, found no reliable evidence with regard to the involvement of Rajendra Rai and Ram Das Rai in the rime and, therefore, they were acquitted of the offences they were charged with. On appeal by the respondents the High Court, as said earlier, rejected the death reference and allowed the appeals by setting aside the conviction and sentence awarded to the respondents and acquitted them against which the two appeals, one by the cousin of the deceased and another by the State have been preferred.

6. Learned counsel for the appellant urged that the High

Court has mis-appreciated the evidence of eye witnesses, namely, Jagdish Rai, PW 7 and Jageshwar Rai, PW 8 who are the eye-witnesses, and also witnesses to the inquest report on the ground that they had not given out the names of the assailants, a mention of which should have been found in the inquest report. He also submitted that the evidence of remaining eye-witnesses, namely, Kalicharan Rai, PW 9 and Deopati Devi, PW 10 and the informant Mahendra Rai, PW 11 have been wrongly rejected on the ground of minor discrepancies in their evidence. He further submitted that an unrealistic approach has been made by the High Court in appreciating the timings of the preparation of the inquest report Ext. 9, recording of Fardbeyan Ext.10 and the arrival of the dead body in the hospital which has resulted into total failure of justice. As against this the learned counsel appearing for the respondents strongly supported the conclusions recorded and the view taken by the High Court in recording the order of acquittal. According to him the prosecution has failed to establish the genesis by reason of which the entire prosecution story becomes doubtful and the evidence of the so called eye witnesses is nothing but based on concoction and deliberations.

7. In order to examine the aforementioned rival contentions, we have scrutinised the evidence and material on record by the assistance of learned counsel appearing for the parties. A perusal of the statement of the informant Mahendra Rai, PW 11 would reveal that he made a very assertive and categorical statement that at about mid day on 17.5.1988 when he along with Jageshwar Rai, PW 8 was sitting in his bathan situated on the south of mango tree under which Arun Rai was sleeping on a cot, he saw the respondents 1 and 2, namely, Mithilesh Rai and Madan Rai going towards the cot on which Arun Rai was sleeping. He further deposed that respondent No. 2 Madan Rai caught hold the head of deceased Arun Rai and the respondent No. 1 Mithilesh Rai made an assault on the neck of the deceased by the Kakut (chaff-cutter) with which he was armed. He also deposed that when he and Jageshwar Rai, PW 8 made an attempt to catch hold the respondents 1 and 2 but they were threatened by them saying that they would also meet the same fate if they attempt to catch them and, therefore, they could not catch the assailants ran away towards their house. Mahendra Rai PW 11 also stated that at that point of time Jagdish Rai, PW 7 and Kalicharan Rai, PW 9 had also arrived there who were also threatened by respondent Mithilesh Rai, in case they tried to apprehend them. He also stated that on the arrival of the police Inspector Kailash Prasad, PW 13 he gave him Fardbeyan, Ext. 10 to him about the occurrence giving out the names of the assailants. Similar is the evidence of Jageshwar Rai, PW 8. These two witnesses, namely, Jageshwar Rai and Mahendra Rai have been fully corroborated on all material aspects by the other two eye witnesses, namely, Jagdish Rai, PW 7 and Kalicharan Rai PW 9 who have consistently deposed that they also saw the respondent No. 2 Madan Rai catching hold the head of deceased Arun and the respondent No. 1 Mithilesh Rai making an assault on his neck by the Kakut. This evidence further finds support from the statement of Mst. Deopati Devi, PW 10 who was there with her minor son who was easying just near the mango tree under which this occurrence had taken place and she had herself witnessed the occurrence.

8. We have also carefully perused the evidence of PW 1 Neeki Rai and Rao Deo Rai, PW 4 with regard to the morning altercation and dispute with the deceased on the payment of price of the milk but we do not find any infirmity to

disbelieve their testimony. We are unable to appreciate the conclusions recorded by the trial court and accepted by the High Court that the said story is unbelievable. In our opinion the view taken by the trial court and the High Court on this aspect cannot be accepted. It, therefore, cannot be successfully contended that the prosecution case was wanting in the matter of genesis. It was, however, submitted by the learned counsel for the respondents before us that such a trifling matter can hardly give rise to the commission of an offence like murder. It is difficult to believe the submission as the commission of an offence depends on the frame of mind of the offender which could not be easily judged. There may be persons who may take a very serious view of a trifling matter and there may also be persons who may even ignore serious views.

9. Coming to the evidence of eye witnesses Jagdish Rai, PW 7 and Jageshwar Rai, PW 8 it may be pointed out that their evidence has been rejected by the High Court merely on the ground of discrepancy in the timings of preparation of the inquest report Ext. 9 and the absence of the names of the assailants in the same. However, we find that the High Court committed a patent error in appreciating the same. It may be pointed out that inquest reports are prepared as envisaged in Section 174 (1) Cr.P.C. Section 174 Cr.P.C. contemplates the preparation of an inquest report by the police officer in the presence of two or more respectable inhabitants of the neighborhood and draw up a report of apparent cause of death, describing such wounds, fractures, bruises and other marks of injury as may be found on the body stating in what manner or by what weapon or instrument (if any) such marks appeared to have been inflicted. For ready reference sub-Section (1) of Section 174 Cr.P.C. is reproduced hereunder:-

"174. Police to enquire and report on suicide, etc. (1) When the officer-in-charge of a police station or some other police officer specially empowered by the State Government in that behalf received information that a person has committed suicide, or has been killed by another or by an animal or by machinery or by an accident, or has died under circumstances raising a reasonable suspicion that some other person has committed an offence, he shall immediately give intimation thereof to the nearest Executive Magistrate empowered to hold inquests, and, unless otherwise directed by any rule prescribed by the State Government, or by any general or special order of the district or Sub-Divisional Magistrate, shall proceed to the place where the body of such deceased person is, and there, in the presence of two or more respectable inhabitants of the neighborhood, shall make an investigation, and draw up a report of the apparent cause of death, describing such wounds, fractures, <??> and other marks of injury as may be found on the body, and stating in what manner, or by what

weapon on instrument (if any) such marks appears to have been inflicted." (emphasis supplied)

A perusal of Section 174(1) would go to show that it does not require anywhere to mention the names of assailants. It was, therefore, neither incumbent upon the police officer Kailash Prasad, PW 13 who prepared the inquest report, to mention the names of the assailments nor it was necessary for the eye witnesses Jagdish Rai and Jageshwar Rai who are the witnesses to the said inquest, to insist the mention of the names of the assailants in the said inquest report. As regards the time of the preparation of the inquest report Ext.9 is concerned it is hardly of any consequence in the present case. It is not doubt true that Jagdish Rai, PW 7 stated that the inquest was prepared at about sunset which could not be said to be correct statements because according to the High Court the dead boy itself was received in the hospital about 11 kms away from the place of occurrence at about 5 PM but it may be noticed that there is not authentic and reliable evidence that the dead body was received in the hospital at 5 PM. This apart the statement of Jagdish Rai, PW 7 was recorded in August 1986 while the incident had occurred in May 1983 more than a year before. It is just possible that the witnesses did not remember the exact time of the preparation of the inquest after such a long lapse of time. His testimony, therefore, cannot be rejected on this ground alone.

10. We find that the High Court rejected the ocular version of the informant Mahendra Rai, PW 11, Kalicharan Rai, PW 9 and Smt. Deopati Devi, PW 10 on the so called contradictions but the said view taken by the High Court cannot be accepted for two reasons, firstly, the discrepancies pointed out by the High Court are so insignificant and minor that they hardly have any bearing on material aspect of the case so as to render the evidence unreliable or even doubtful and secondly, the said witnesses were not shown their case diary statements recorded under Section 161 Cr.P.C. from which they were sought to be contradicted nor the said contradictions/omissions have been exhibited and placed on record. That being so, merely on the basis of the statement of the police officer Kailash Prasad, PW 13 that the witnesses did not make the alleged statements cannot be accepted without the relevant portions of their statements being exhibited. In these facts and circumstances we find that the High Court was clearly at an error to record finding of innocence of the respondent No. 1 and 2, namely, Mithilesh Rai and Madan Rai. So far as the respondent No. 3 Raj Naresh Rai is concerned we find that his acquittal is well founded as in the absence of any cogent evidence against him, no interference in his acquittal can be made.

11. In the result we allow the appeals partly and set aside the judgment of the High Court so far as it relates to the acquittal of respondents 1 and 2. We restore the judgment and order of conviction <??> by the trial court convicting the respondent No. 1 Mithilesh Rai under Section 302 but modify his sentence by commuting the death sentence into life sentence. We also uphold the conviction of respondent No. 2 Madan Rai under Section 302 read with Section 109 IPC and sentence him to undergo life imprisonment.