

MUNDRIKA MAHTO AND ORS.

A

v.

STATE OF BIHAR

APRIL 29, 2002

[UMESH C. BANERJEE AND Y.K. SABHARWAL, JJ.]

B

Code of Criminal Procedure, 1973:

Murder—FIR—No mention of names of some of the accused—Effect of—Held, considering the shock on the minds of eye-witnesses on whose statement FIR was recorded and when large number of accused were involved in the commission of crime, not naming of some of the accused by itself would not result in failure of prosecution. Penal Code, Ss. 302/34 and 201.

C

Evidence Act, 1872:

D

Testimony of the eye-witnesses—Appreciation of—Held, within a short time of occurrence of crime the statement of informant naming the accused was recorded though not corroborated by the statement of other eye-witnesses—Held, there is no scope for false implication within such short time span.

E

Testimony of interested witness—Reliability—When the manner of commission of the crime has been fully corroborated by the testimony of the eye-witnesses, minor contradictions in the testimony are of no consequence and it is trustworthy and reliable—Code of Criminal Procedure, 1973.

F

According to prosecution, on the fateful day deceased was riding a scooter and two persons (prosecution witnesses) were sitting on the back of the scooter. When they reached near a tea stall, they were obstructed by a hand-cart and suddenly 10 to 15 persons (accused) came and pulled the deceased from the scooter and two of them assaulted the deceased with sharp edged weapons and severed his head from the trunk. On alarm being raised by the persons accompanying the deceased, son of the deceased reached the place of occurrence. The accused dragged the trunk of the deceased and dumped the same in a pond. Police was informed about the incident on telephone. Within 15 minutes, Police reached the spot and statement of one of the eye-witnesses (nephew of the deceased) was recorded and FIR was

G

H

- A** registered. Statement of other eye-witness was also recorded, who in his testimony identified the accused persons but did not mention the name of the main accused. The Sessions Judge acquitted one of the accused and convicted the remaining 12 accused under Sections 302/34 and 201 of Indian Penal Code and under Section 27 of the Arms Act. Each of them was sentenced to imprisonment for life. Aggrieved, accused moved the High Court. High Court
- B** acquitted three of them and affirmed the conviction of the remaining nine accused persons. Hence this appeal.

- C** It was contended for the appellants that one of the eye-witnesses had not named one of the appellants and, therefore, conviction of the appellants on the basis of the statement of another interested witness could not be sustained; and that if the trunk of the deceased had been dragged, as alleged, there would have been more injuries on the trunk but there was no mention as such in the inquest report which implied that it was either not visible or was considered inconsequential by the Investigating Officer.

- D** Dismissing the appeal, the Court

- E** HELD: 1.1. The testimony of the prosecution witness is most natural, trustworthy and reliable. The fact that this witness has named the two accused and not the other appellant, shows the truthfulness of the statement that the witness knew only some of the accused by name and, thus, he named them.
- E** Regarding others, his statement is that 14-15 persons came there and one of them put the amputated head in a plastic bag. [579-H; 580-A]

- F** 1.2. It is important to bear in mind that within about 15 minutes of the commission of the offence, the Police party arrived at the scene and within 15 minutes thereof, the statement of informant naming the appellants was recorded. As such it cannot be said that since the appellants were not named by one of the witnesses or that he had not heard their names shows that they were falsely implicated and that there was hardly any scope for false or over implication within a short time span of about half an hour. In respect of Informant/Prosecution witness who is the relative of the deceased and has
- G** identified all the accused, the contention that he being an interested witness, the conviction of the appellants cannot be based on his testimony without any corroboration is without any substance. The manner of commission of the offence has been fully corroborated by the testimony of one of the eye-witnesses and from the stage of dragging of trunk of the deceased by one of the accused as well. The minor contradictions in the testimony of witness are
- H** of no consequence. The contention that informant does not name the main

accused and other accused for dragging the body of his father or that the name of main accused who pulled down the deceased from the scooter and dragged his body has not been mentioned in the FIR in the contextual facts is again of not much consequence. The shock on the minds of Prosecution witness/Informant on whose statement FIR was recorded within about half an hour can be well imagined and if in the process when large number of accused were involved, name of some of them being not mentioned by one and mentioned by the other or if there is slight variation in the role attributed, that by itself will not result in failure of the prosecution.

[580-B-C, D, E, F, G]

2.1. On all material aspects, the testimony of witnesses is trustworthy and reliable. It is not the law that conviction cannot be based of the testimony of relations. That alone cannot be the ground to win over the conviction. The scratch injury, according to the testimony of the Doctor, is possible as a result of dragging. The non-mention of it by the Investigating Officer in the inquest report is of one consequence, in the light of other evidence on record. The High Court seems to be right in its conclusion that when a large number of persons were dragging the trunk after catching hold of the same, only a small portion may be touching the ground as a result whereof, there may not be a large number of injuries on account of dragging. [581-H; 582-A, B]

2.2. The factum of dragging of the headless body stands established from the evidence on record with corroboration from the sketch map along with the explanatory notes thereupon showing the collection of fresh blood in huge quantity adjacent to the scooter and a line of blood on the path of the dragging from the scooter up to the pond where the trunk of the body was left. The manner and the vengeance with which the crime was committed shows that the accused were not bothered about others watching them and, therefore, the submission that the accused who were large in number having not caused any injury to witnesses who were present along with deceased show the improbability of their presence on the scene of occurrence, has no substance.

[582-F, G]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 701 of 1993.

From the Judgment and Order dated 2.3.93 of the Patna High Court in CrI.A. No. 82 of 1990.

U.R. Lalit, K.K. Tyagi and Pankaj Kalra for the Appellants.

A Saket Singh for B.B. Singh for the Respondent.

The Judgment of the Court was delivered by

B Y.K. SABHARWAL, J. The murder of deceased Ramanand Mahto was committed in a ghastly manner. The head of the deceased was severed from the trunk. 13 persons were charged for the offence including the appellants who were six in number. One out of 13 - Shyam Narain Mahto @ Nanhki Mahto was acquitted by the Sessions Court. Three of them - Rishi Mahto, Asmani Mahto and Anand Lal Mahto were acquitted by the High Court.

C The special leave petitions filed by three of the accused - Lachhu Gaderi, Ramchandra Gaderi and Subhash Mahto challenging the judgment of the High Court confirming that of the Sessions Court were dismissed and thus, their conviction and sentence has been finally maintained.

D The prosecution case, in brief, is that the deceased was riding a scooter and Ram Briksha Mahto (PW-2) and informant Suresh Kumar (PW-5) were sitting on the back of the scooter. Suresh Kumar was returning home after purchasing medicines when on the way, deceased who was riding a scooter on which Ram Briksha Mahto was sitting at the back, saw him and stopped the scooter and gave lift to him. The time was between 10.30 p.m. to 10.45 p.m. When they reached in front of tea stall of Lalan Mahto situated at E Begampur Mandai Mohalla, one person who was sitting on a thella (handcart) blocked the road with it the moment the scooter reached near the said tea stall. All of a sudden, 10 to 15 persons came and pulled the deceased from the scooter. Lachhu Gaderi with Dab and Ramchandra Gaderi with Bhujali started assaulting the deceased. Dab and Bhujali are sharp edged weapons. F The accused thrashed the deceased on the ground and his head was severed from the trunk by Ramchandra Gaderi and Lachhu Gaderi with their weapons while others were catching hold of the deceased. The trunk of the deceased was dragged towards the north. Santosh Kumar (PW-1), son of the deceased reached the place of occurrence on the alarm being raised by Suresh Kumar and Ram Briksha Mahto. All this happened on account of litigation concerning G land that was going on between the deceased and Lachhu Gaderi and others.

Immediately after the occurrence, the Police was informed on telephone at about 11.00p.m. The telephonic information was recorded in daily diary. Within about 15 minutes, i.e. at about 11.15 p.m., the Police reached at the place of occurrence and on the statement of Suresh Kumar (PW-5) who is the H nephew of the deceased, the FIR was registered. The statement of Suresh

Kumar was recorded at about 11.30 p.m. The names of the appellants were mentioned in the FIR. Ramchandra Gaderi and Lachhu Gaderi have said to have chopped of the head of the deceased. Other accused are said to have pulled down the deceased from the scooter and dragged the trunk and threw it in a pool of water. They are said to have caught hold of the deceased while Lachhu Gaderi and Ramchandra Gaderi were chopping of the head. Accused Subhash kept the severed head of the deceased in a plastic bag. Accused Mundrika is said to have extinguished the light. Santosh Kumar is said to have reached the place of occurrence when the trunk of his father was being dragged and he is the eye witness from the stage of the dragging whereas Ram Briksha Mahto and Suresh Kumar have said to have watched the entire occurrence. The conviction of Lachhu Gaderi, Ramchandra Gaderi and Subhash has been finally maintained, their Special Leave Petitions having been dismissed.

The place of occurrence is near Chhapri of accused Mundrika. Ram Briksha Mahto has named Ramchandra Gaderi and Lachhu Gaderi. According to his testimony, both were known to him. It has come in his testimony that he knew the deceased as he was living near the house of his in-laws. The deceased, noticing this witness, stopped the scooter and offered to give him lift and later noticing Suresh Kumar gave lift to him as well. He further states that when the scooter of Ramanand Mahto reached near the shop of Lalan Mahto, a person blocked the road by thela and the deceased had to stop the scooter and then 14-15 persons came there and they all pulled down the deceased from the scooter. He identified Ramchandra Gaderi and Lachhu Gaderi. He knew them. According to his testimony, these two amputated the head of Ramanand Mahto who was caught by others. He further states that on the shout of someone, light was put off and headless body was dragged and thrown in a pit full of water. The light was put off by accused Mundrika. On raising alarm, Santosh Kumar and other villagers gathered at the place of occurrence and the accused fled therefrom.

Learned counsel for the appellants, Mr. Lalit, strenuously contended that the fact that Ram Briksha Mahto (PW-2) has named Ramchandra Gaderi and Lachhu Gaderi and not the appellants who have only been named by Suresh Kumar (PW-5) who is an interested witness, the conviction of the appellants is not liable to be sustained, the same being based on no evidence. We have minutely and carefully perused the testimony of Ram Briksha Mahto (PW-2), Suresh Kumar (PW-5) and Santosh Kumar (PW-1). The testimony of Ram Briksha Mahto (PW-2) is most natural, trustworthy and reliable. The

- A fact that this witness has named the two accused as aforesaid and not the appellants shows the truthfulness of the statement that the witness knew Ramchandra Gaderi and Lachhu Gaderi and, thus, he named only them. Regarding others, his statement is that 14-15 persons came there and one of them put the amputated head in a plastic bag. That was accused Subhash, though not named by Ram Briksha Mahto (PW-2) as he did not know him.
- B It is in this context that Ram Briksha Mahto stated that he has heard the names of other accused from the advocate. It is important to bear in mind that within about 15 minutes of the commission of the offence, the Police party arrived at the scene and within 15 minutes thereof, the statement of Suresh Kumar naming the appellants was recorded. Under these circumstances, we
- C are unable to accept the contention that since the appellants were not named by Ram Briksha Mahto or that he had not heard their names shows that they were falsely implicated. Regarding the submission of Mr. Lalit that due to enmity, the appellants were falsely implicated, it has to be noticed that there was hardly any scope for false or over implication within a short time span of about half an hour.
- D

In respect of Suresh Kumar (PW-5) who is the nephew of the deceased and has identified all the accused, the contention of Mr. Lalit is that being an interested witness, the conviction of the appellants cannot be based on his testimony without any corroboration which, it was contended, was absent.

- E This contention is also without any substance. The manner of commission of the offence has been fully corroborated by the testimony of Ram Briksha Mahto and from the stage of dragging by Santosh Kumar as well. The minor contradictions in the testimony of Ram Briksha Mahto are of no consequence. The contention that Santosh Kumar does not name accused Mundrika and Ram Rup Mahto for dragging the body of his father or that name of Mundrika
- F in pulling down the deceased from the scooter and dragging his body has not been mentioned in the FIR in the contextual facts is again of not much consequence. The shock on the minds of Santosh Kumar (PW-1) and Suresh Kumar (PW-5) on whose statement FIR was recorded within about half an hour can be well imagined and if in the process when large number of
- G accused were involved, name of some not mentioned by one and that is mentioned by the other or there is slight variation in the role would not be attributed, that by itself will not result in failure of the prosecutions.

- A great emphasis was laid by Mr. Lalit on the testimony of Dr. Shambhu Saran (PW-8) and also on the testimony of the Investigating Officer, S.I. Din
- H Dayal Pandey, (PW-6) to discredit the story of dragging of the headless body

by the appellants and throwing thereof at a distance of about 40 ft. It was strenuously contended by the learned counsel that if it had been so dragged, that would have resulted in number of injuries and not only one alone, which alone can be attributable to the alleged dragging. It was submitted that the rest of all the nine injuries, such as, severing of the neck at the level of the 5th cervical vertebra were incised wounds with which the appellants were not concerned as these incised wounds cannot be attributed to the dragging of the trunk of the deceased or his pulling from the scooter. It was strenuously contended that had it been a case of dragging as alleged by the prosecution, there would have been many more injuries than only 3" scratch on the right arm of the deceased which also does not find mention in the inquest report which further shows that it was either not visible or was considered inconsequential by S.I. Din Dayal Pandey (PW-6) to be mentioned in the inquest report prepared immediately by him. The impugned judgment of the High Court, it was contended, is based on no evidence as the testimony of Suresh Kumar (PW-5) has been referred to and relied upon without referring to the testimony of the Investigating Officer which shows the material contradictions and the false and over implication of the appellants, on account of the enmity. It was contended that Suresh Kumar (PW-5) was an interested witness being the nephew of the deceased. There was enmity between the parties. It was pointed out by learned counsel that Suresh Kumar (PW-5) did not produce the medical prescription or the medicines though it was stated by him that he had gone to the market to purchase medicines and was returning home after purchase thereof. Further, it was pointed out that it was an improbability that Suresh Kumar (PW-5), a third person would be given a lift on a scooter, meant for two persons. We are considering a case of rustic villagers. It also cannot be ignored that in large number of cases, the investigation is neither perfect nor scientific. If the Investigating Officer does not ask a witness to produce the medicines or the prescription or the cash memo showing payment for the purchase of medicines, the witness on his own would not produce it. There is nothing abnormal in a small place like the one with which we are concerned, to give a lift to the third person and that too to nephew at the night time.

We have carefully and minutely examined the record including, as earlier stated, the evidence of Suresh Kumar (PW-5) read with Santosh Kumar (PW-1) and Ram Briksha Mahto (PW-2). Their evidence inspires confidence. It was natural for Ram Briksha Mahto not to name the persons who were dragging the headless body because he did not know them. On all material aspects, the testimony of these witnesses is trustworthy and reliable. It is not

A the law that the conviction cannot be based on the testimony of relations. That alone cannot be the ground to over turn the conviction. The scratch injury, according to the testimony of the Doctor, is possible as a result of dragging. The non-mention of it by the Investigating Officer in the inquest report is of no consequence, in the light of other evidence on record. The High Court seems to be right in its conclusion that when a large number of persons were dragging the trunk after catching hold of the same, only a small portion may be touching the ground as a result whereof, there may not be a large number of injuries on account of dragging. Another factor which deserves to be noticed is that the Sessions Court, on perusal of the case diary, has recorded that the Investigating Officer was deliberately trying to help the defence. The contention that was urged in this regard before the Sessions Court and also before us was that the inquest report having been held at 11.15 p.m. and the statement/furdbeyan recorded at 11.30 p.m., inquest report should be treated as the FIR and not the FIR registered on the basis of the Furdbeyan and, therefore, the mention of the name of the appellants therein deserves to be ignored. The Court of Sessions noticed, on perusal of the case diary, that it appears that Investigating Officer first recorded the Furdbeyan and thereafter held the inquest on the dead body of the deceased, but recorded in the case diary, the time of recording of the Furdbeyan as 11.30 p.m. and that of holding of inquest as 11.15 p.m. in the reverse order to help the accused. In fact, the case diary shows that the Fardbeyan was recorded earlier and inquest later and thus, inquest could not be treated as the FIR. Similarly, the telephonic conversation also could not be treated as FIR, as contended, as it was a cryptic information that was received and recorded in the daily diary regarding the commission of offence.

F The factum of dragging of the headless body stands established from the evidence of record with corroboration from the sketch map along with the explanatory notes thereupon showing the collection of fresh blood in huge quantity adjacent to the scooter and a line of blood on the path of the dragging from the scooter up to the pond where the trunk of the body was left.

G The manner and the vengeance with which the crime was committed shows that the accused were not bothered about others watching them and, therefore, the submission that the accused who were large in number having not caused any injury to Ram Briksha Mahto and Suresh Kumar would show the improbability of their presence on the scene of occurrence, has no substance.

H The cases of appellant No.1 Mundrika and appellant No. 5 Ram Rup

Mahto, cannot be treated differently. For the reason already noticed earlier, we are unable to accept the submission that the decision of the High Court is based on no evidence. A

As a result of the aforesaid discussion, finding no illegality in the judgment, the appeal is dismissed.

S.K.S.

Appeal dismissed. B