

S U P R E M E    C O U R T    O F    I N D I A  
RECORD OF PROCEEDINGS

CRIMINAL APPEAL NO(s). 1052 OF 2003

PRABODH KUMAR DUBEY

Appellant (s)

VERSUS

STATE OF BIHAR

Respondent(s)

(With office report )

WITH APPEAL(CRL) NO. 1247 of 2003

(With appln. for exem. from filing OT and with office report)

Date: 10/02/2010      This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE HARJIT SINGH BEDI

HON'BLE MR. JUSTICE C.K. PRASAD

For Appellant(s)

Mr. Surendra Singh, Sr. Adv.  
Mr. N. Hariharan, Mr. Rakesh Saamrendra,  
Mr. Kumar Parimal and  
Mr. Aniruddha P. Mayee, Advs.

For Respondent(s)

Mr. Anuj Prakash, Adv.  
Mr. Gopal Singh, Adv.  
Mr. Chandan Kumar, Adv.

UPON hearing counsel the Court made the following

O R D E R

The appeal so far as Prabodh Kumar Dubey is concerned, dismissed as having been abated.

So far as Ajit Kumar Dubey is concerned, the appeal is allowed.

The appellants are on bail. Their bail bonds shall stand discharged.

[SUMAN WADHWA]  
COURT MASTER

[VINOD KULVI]  
COURT MASTER

Signed order is placed on the file.  
IN THE SUPREME COURT OF INDIA  
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1052

OF 2003

PRABODH KUMAR DUBEY

.. APPELLANT(S)

vs.

STATE OF BIHAR

.. RESPONDENT(S)

CRIMINAL APPEAL NO. 1247

OF 2003

AJIT KUMAR DUBEY

.. APPELLANT(S)

vs.

STATE OF BIHAR

.. RESPONDENT(S)

O R D E R

The appeal by way of special leave arises out of the following facts:

Prabodh Kumar Dubey, since deceased, his son Ajit Kumar Dubey and one Bindeshwari Singh were brought to trial for the offence under Sec.307/34 of the Indian Penal Code for attempting to murder Ajit Kumar Dubey PW.1 on 25th March 1981 at 10.00 p.m. outside the house of the injured. The trial Court relying on the evidence of PW.1 as supported by the medical evidence of PW.4, Dr. Basant Kumar Sinha, convicted Prabodh Kumar Dubey and Ajit Kumar for the aforesaid offence and sentenced them to seven years rigorous imprisonment. Bindeshwari Singh, the third

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accused, was however acquitted by the Trial Court.

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matter was, thereafter, taken in appeal before the Patna

High Court which confirmed the conviction and sentence on

the two appellants and in doing so relied on the statements

recorded in the case diary preferring to ignore the

evidence taken in Court on the plea that statements made in

Court were incorrect.

The present appeal is before us at

the instance of Prabodh Kumar Dubey and Ajit Kumar Dubey

and we are told by the learned counsel for the appellants

that during the pendency of this appeal, Prabodh Kumar

Dubey has died a natural death. The appeal qua him

therefore is disposed of as having abated but survives qua

Ajit Kumar Dubey.

Mr. Surendra Singh, the learned senior counsel for

the appellants, has raised only one argument during the course of hearing. He has pointed out that this was a case under Section 307 of the IPC and as such the injured himself was available as a witness and the prosecution story was thus expected to come out at the earliest possible time but it had come on record that the injured had for the first time named the accused on 6th April 1981 to the Investigating Officer Bindeshwari Prasad Mishra

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(PW.5). He has accordingly submitted that this story by itself was difficult to believe in the light of the admitted animosity between the parties arising out of security proceedings inter se them regarding some property.

The learned State counsel has, however, pointed out that from the evidence it was apparent that PW.1 had been unable to make a statement till 6th April 1981 on account of his injuries and it was on regaining consciousness that he had done so at the first opportune moment. He has accordingly submitted that there was no reason to doubt the evidence given by PW.1 in Court.

We have gone through the arguments advanced by the learned counsel very carefully. Dr. Basant Kumar Sinha (PW.4) who had examined the injured on 26th March 1981 at 4.00 a.m. in the Patna Medical College stated that from the record it did not appear as if the patient was unconscious inasmuch had he been in that condition the fact would have been reflected in the Bed Head Picket. We have also gone through the injuries which were detected at the time of the medical examination on the 26th of March 1981 and find the fact that but for injury No.1 which was from a shot fired from a shot gun with nine penetrating wounds in the right inter-scapular region, all the other injuries were simple in nature. We are, therefore, of the opinion that these

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injuries would not have rendered PW.1 incapable of making a statement for a period of 10 days. Even otherwise, the

evidence of the Investigating Officer destroys the prosecution's case. He stated that he had recorded the statement of the other witnesses including Ram Chandra Prasad, Tarkeshwar Prasad Sah, Tungnath Prasad and the wife of the injured on 16 April, 1981, and it was for the first time on that day that the name of the accused had surfaced. We find absolutely no reason to discard the evidence of the I.O. We are, therefore, of the opinion that the names of the accused were perhaps not known till 16th April 1981 and it was thereafter that the story was concocted and the accused roped in on suspicion. It is for this reason that the High court in its wisdom thought that the investigation into the matter had not been fair and it was thus proper to look at the case diary and to compare the statements under Sec.161 of the Criminal Procedure Code with the statements given in Court and having relied on the statements under Sec.161, dismissed the appeal.

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Accordingly, we allow the appeal and set aside the conviction of the appellants.

The appellants are on bail. Their bail bonds shall stand discharged.

.....J.  
(HARJIT SINGH BEDI)

.....J.  
(C.K. PRASAD)

New Delhi,  
February 10, 2010.