

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 118 OF 1997@@
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State of Bihar

Appellant (s)

Versus

Kapil Deo Prasad

Respondent (s)

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It is more out of anguish than anger that we notice in this case that a ghastly act resulting in elimination of entire family consisting of 5 members is going unpunished , if not solely but mainly on account of total apathy of the police officers of the State contributed by the prosecution branch.

On midnight of 3rd April, 1990 in a village in State of Bihar 5 members of a family including male, female, young and old were eliminated by causing injury by sword and thereafter putting the house on fire. The fire was noticed by the villagers. They controlled it. When bodies were taken out, they were in pool of blood. It was evident that the house had been put on ablaze with a view to eliminate evidence. Only one person survived, a child aged about 9 years. It is clear that the survival of the child was on account of destiny and medical aid. Otherwise an attempt was to eliminate him too. After remaining in hospital for about a month, the child came out.

The respondent was charged for the murder. He was the younger brother of the deceased. One of the person who died

was the mother of the accused. Others were children and wife of his brother.

During the trial, the prosecution examined only three witnesses. Two of the witnesses were declared hostile. The third was the chowkidar. He was not the eye-witness. the prosecution thought that it has done its duties by examination of these three witnesses. The Court examined 5 witnesses as Court witnesses. One of the Court witness, namely, Jagdish was also declared hostile. He was a witness to the alleged recoveries made by the prosecution. The star witness examined by the Court was Pradeep, the child who survived the incident. The Investigating Officer was not examined. The First Information Report was not proved. The doctors were not examined. In short every effort, it appears, was to ensure the acquittal of the respondent. The case makes it evident that the police and the prosecution agency were more interested in the respondent being acquitted rather than being convicted. We do not know what investigation was conducted after the ghastly incident was reported to the police. Relying upon, mainly the testimony of the child witness, the

Sessions Court found the respondent guilty of offence under Section 201, 302 and Section 307 of the Indian Penal Code. For the offence under Section 302 death penalty was awarded on the respondent.

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In the death reference as also the criminal appeal independently preferred by the respondent, the High Court by judgment under appeal has set aside the conviction and consequently the sentence.

It cannot be disputed that except Court witness No.1, Pradeep, none of the other witnesses throw any light so as to connect the respondent with the commission of crime of eliminating the 5 persons.

We do not know whether the statement of the child witness was recorded by the investigating officer under Section 161 Cr.P.C. or not. We do not know the reasons for non-examination of the investigating officer. On query being raised the learned counsel for the State was unable to assist the Court on this aspect. The child after being discharged from the hospital went to his near relation. There is nothing to show whether he informed anybody for a period of two years before he was examined in Court as to what he had seen. The other discrepancy noticed by the High Court is that in the examination-in-chief the child witness first stated that there was only one person i.e. the respondent, but in corss-examination he deposed that there were two other persons who were having torches with them. Obviously the child must have been highly frightened. It cannot be disputed that if the testimony of the child witness is excluded, there would be

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no other evidence to connect the respondent with the crime. The High Court after taking note of these discrepancies and infirmities came to the conclusion that it is not safe to convict the respondent. Having heard Mr. Aggarwal, learned counsel for the appellatant - State we find it difficult to take a view different than that was taken by the High Court.

Before concluding we deem it appropriate to direct that a copy of this judgment shall be sent to Director General of Police of State of Bihar. We hope that he would examine the matter and, if possible, even at this distant time of lapse of nearly 13 years, try to fix the responsibility for not conducting the investigation in proper manner and for not prosecuting the trial properly.

For the reasons aforesaid, we dismiss the appeal. The bail bond of the respondent shall stand discharged.

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.....J
(Y.K. Sabharwal)

New Delhi,
December 10, 2002

.....J
(Arun Kumar)