

A GURJA BEDIA AND ORS.

v.

STATE OF BIHAR

AUGUST 1, 1990

B [KULDIP SINGH, P.B. SAWANT AND  
M. FATHIMA BEEVI, JJ.]

*Indian Penal Code: ss. 34, 302 & 394—Identity of assailants—  
Testimony of P.W. suffering from serious infirmities casting reasonable  
doubt—Benefit of doubt to be given to accused—Appellants acquitted.*

C The appellants were convicted for offences under ss. 302, 394 and  
34 IPC. They were alleged to have entered the house of the deceased at  
midnight and attacked him and his wife, PW 14, with sharp edged  
D weapons. He sustained fatal injuries and died instantaneously. His wife  
was injured. Their two sons ran to the house of uncle PW-1, at a  
distance to inform him of the incident. They had not seen the assailants.  
By the time PW-1 reached the scene the assailants had fled. He had been  
in the house the whole night and contacted all the concerned persons. In  
the FIR that he lodged at about 10 a.m. the next morning the assailants  
were not named.

E The prosecution case was that the appellants had committed the  
crime on account of enmity. PW-14, who claimed to be an eye witness,  
deposed that she had identified the appellants. She also stated that she  
became unconscious and regained consciousness only the next day when  
the police arrived. PW-1 supported her version.

F The trial court accepted the testimony of PW-14. The High Court  
agreed with it.

G In this appeal by special leave, it was contended for the appellants  
that if PW-14 had identified the assailants, it would have been possible  
for PW-1 to disclose the identity of the accused at the time the first  
information report was lodged, and that the prosecution had intro-  
duced the theory of unconsciousness of PW-14 only in an attempt to  
explain away the lacuna.

Allowing the appeal, the Court,

H HELD: 1. It is not safe to sustain the conviction when there is

reasonable doubt regarding the participation of the appellants in the crime. The benefit of doubt must necessarily go to them.

2. The statement of PW-1 at the earliest point of time belies the truth of what he had deposed before the court. He had been categoric in the FIR that he had made enquiries with the wife and sons of the deceased before proceeding to the police station and asserted that five or six unknown persons had committed the crime. He had also stated that details could be furnished by the widow and sons of the deceased. This affirmed that he could not gather any useful information regarding identity of the assailants. All the same, in cross examination he supported the version of PW-14 that she was lying unconscious when he reached the house at night and she narrated the incident after regaining consciousness when the police reached there. It clearly indicates that an attempt had been made by the prosecution to introduce the case of unconsciousness of PW-14 to explain the infirmity. [576F; G]

3. The circumstance that the identity of the assailants was unknown until the police arrived at the scene showed that PW-14 or her children had not identified the assailants at the time of the occurrence. The courts below have failed to appreciate her evidence in the correct perspective in the light of the clinching evidence. [576B]

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 96 of 1979.

From the Judgment and Order dated 9.11.1977 of the Patna High Court in Criminal Appeal No. 332 of 1971.

J.M. Khanna for the Appellants.

D. Goburdhan for the Respondent.

The Judgment of the Court was delivered by

FATHIMA BEEVI, J. This appeal by special leave is directed against the judgment and order dated 9.11.1977 of the High Court of Patna whereby the conviction and sentences of the appellants for the offences under Sections 302, 394 and 34, I.P.C., have been confirmed.

The three appellants are brothers. The deceased, Bigna Bedia, lived with his wife Sohagia Bedia and sons in village Karmatola. The incident happened on the night of 5/6.9.1968. Bigna was sleeping

A along with his son Jhalku in the verandah while Sohagia was sleeping along with Malku on cot. At about midnight, the intruders entered the house by cutting the *tatti* and attacked Sohagia and her husband. Binga Bedia sustained fatal injuries and died instantaneously. Sohagia was injured. The intruders took away the utensils and two she-goats kept at one end of the verandah. Jiwan Bedia, the brother of the deceased, B on being informed by Jhalku and Lalku about the incident reached the house and after making enquiries, he lodged the first information report at the police station at about 10.00 A.M in the next morning. The crime was registered against unidentified persons. In the course of the investigation these appellants were arrested and were finally charge-sheeted.

C There had been ill-feeling between the appellants on the one hand and the deceased and his wife on the other, though the appellants are the sons of the elder sister of Sohagia. The prosecution case is that on account of enmity, the three appellants committed the crime. Sohagia claimed to be an eye witness. According to this witness, the D three appellants were armed. Gurja had a *tangi*, Birja had a *lathi* and Mukund had a *pharsa*. On entering the house Gurja and Birja dealt blows on Sohagia with the weapons they had. She got injured and cried. On hearing the alarm, the deceased was awakened from sleep and when he was trying to get up, all the three appellants left her and killed her husband. P.W. 14 asserted that Gurja had been flashing a E torch and that she had identified all the three appellants. She also stated that she became unconscious and regained consciousness only the next day when the police arrived at the scene. According to the prosecution, P.W. 14 is the only eye witness. Lalku and Jhalku who F ran to the house of P.W. 1 had not seen the assailants. The trial court accepted the testimony of P.W. 14 corroborated by the medical evidence and other circumstances as the basis for the conviction. The High Court agreed with the trial court in holding that the prosecution has succeeded to bring home the guilt of all the appellants.

The learned counsel for the appellants urged before us that the testimony of P.W. 14 suffers from serious infirmities casting reasonable doubt as to the identity of the assailants and the conviction is G therefore unwarranted. The circumstances relied on by the learned counsel is that in the first information report the identity of the accused had not been revealed. It is argued that if P.W. 14 had identified the assailants, it would have been possible for P.W. 1 to disclose the identity of the accused at the time the first information H report was lodged and the circumstances are such that the statements

of P.W. 14 are inspired and the prosecution has introduced the theory of unconsciousness of P.W. 14 only in an attempt to explain away the lacuna. To appreciate this contention, it is necessary to scrutinise the first information report in detail. P.W. 1, Jivan Bedia, is the full brother of the deceased. He has been residing in village Jawabera which is at a distance of about half a kilometre from Karmatola. Lalku and Jhalku reached his house at about midnight and raised *hulla* that some thieves had entered their house and killed their father and were also killing their mother. On hearing this, P.W. 1 got up and went to village Jawabera where he informed his *gotias* about the incident. Then taking Sawna Bedia, Jhopra Bedia and others along with him he went to the house of Bigna Bedia. There he did not find any thief. On entering the house, he found Bigna Bedia lying dead with bleeding injuries on his head and legs. The wife of Bigna was also injured with a cut injury on her face. He learnt there from the wife and both the sons of Bigna that 5 or 6 persons had entered the house by cutting the *tatti* and had inflicted injuries on Bigna and his wife with *tangi*, *bhujali* etc. and they also removed the lock and peg and took away utensils and two she-goats from the house. P.W. 1 then went to the villagers of Karmatola and told them about this incident. P.W. 1 also contacted the Mukhia of the village Hindebilli and others before going to the police station. P.W. 1 in narrating the incident in the *Fard byan* stated that he learnt from the wife and sons of the deceased that 5 or 6 persons had entered the house and committed the crime and details could be furnished by the widow and the sons of the deceased.

P.W. 1, no doubt, in cross-examination supported the version of P.W. 14 that Sohagia was lying unconscious when he reached the house at night and she narrated the incident after regaining consciousness the next day when the police reached there.

The statement of P.W. 1 at the earliest point of time belies the truth of what he has deposed before the court. He had been categorical that he made enquiries with the wife and sons of the deceased before proceeding to the police station and asserted that 5 or 6 unknown persons had committed the crime. It clearly indicates that an attempt had been made by the prosecution to introduce the case of unconsciousness of P.W. 14 to explain the infirmity. It may be that P.W. 14 on account of the shock could not have been so eloquent and depressed, but P.W. 1 had been in the house the whole night and he had contacted all the concerned persons and also made enquiries. The statement in Ex. p. 6 that details would be given by the wife and sons who were present in the house also affirms that he could not gather any

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- A useful information regarding the identity of the assailants. The courts below have failed to appreciate the evidence of P.W. 14 in the correct perspective in the light of the clinching evidence in the case. The circumstances that the identity of the assailants was unknown until the police arrived at the scene is clear indication that P.W. 14 or her children had not identified the assailants at the time of the occurrence.
- B It could be that on account of enmity and ill-will their suspicion has turned against these appellants and inspired by that suspicion, the investigation had been misdirected.

- C We do not therefore consider it safe to sustain the conviction when there is reasonable doubt regarding the participation of the appellants. The benefit of doubt must necessarily go to the appellants.

In the result, the appeal is allowed. The convictions and sentences are set aside. The bail bonds shall stand cancelled.

P.S.S.

Appeal allowed.