

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.159 of 1990

Arising Out of Silao P.S. PS.Case No. 519 of 1985 District – Nalanda giving rise to Sessions Trial
No. 321 of 1986.

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Mishari Singh son of late Shri Gandhari Singh, resident of Village Chandi Mao,
Police Station Silao, District Nalanda

.... Appellant

Versus

The State of Bihar

.... Respondent

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Appearance :

For the Appellant : Smt. Shashi Priya Pathak, Advocate (Amicus Curiae)

For the Respondent/s : Shr Dilip Kumar Sinha, A.P.P.

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CORAM: HONOURABLE SHRI JUSTICE DHARNIDHAR JHA

and

HONOURABLE SHRI JUSTICE AMARESH KUMAR LAL

ORAL JUDGMENT

(Per: HONOURABLE SHRI. JUSTICE DHARNIDHAR JHA)

Date: 16-01-2015

The solitary appellant Mishari Singh was tried by the learned 2nd Additional Sessions Judge, Nalanda at Biharsharif, in Sessions Trial No 321 of 1986 by being charged under Section 302/34 of the Indian Penal Code as also under Section 27 of the Arms Act and by the judgment dated 11.4.1990 he was held guilty on both the counts. The appellant was heard on sentence and was directed to suffer rigorous imprisonment for life under Section 302/34 of the Indian Penal Code. No separate sentence was passed upon the appellant after he was held guilty of committing the offence under Section 27 of the Arms Act.

2. The informant (P.W. 6) Saligram Singh gave his fardbeyan on 25.4.1985 at 9.15 P..M. stating that in a Mundan ceremony which was solemnized in Chandi temple of the village, there had been some quarrel between the children. The informant was giving fodder to his cattle when eighteen persons named in the F.I.R. armed variously with rifles, gun, etc. came there. The deceased Siya Singh was also feeding his animals there and seeing him accused

Mishari Singh ordered to kill him. The deceased stated that he was very much standing there and he be killed, upon which this appellant fired a shot which hit Siya Singh in his buttock. Another shot was simultaneously fired by accused Madan Singh which hit the deceased in his neck and he fell down dead there. The accused persons attempted to lift the dead body of Siya Singh to take it away but the informant and other villagers who assembled by then resisted the same as a result of which the mob of accused persons went away towards east.

3. The fardbeyan of the informant (P.W.6) was recorded by P.W. 13 S.I.Bimlapati Singh, who was the Officer-in-charge of Silao Police Station on 25.4.1985. He had come to the village after picking up a rumour that in the village some scuffle had taken place between two parties and one man was injured in that occurrence received injury. After recording the fardbeyan of the informant P.W. 6, P.W. 13 himself took up the investigation and held inquest upon the dead body of Siya Singh which was lying in the courtyard of his Angan. The dead body was dispatched for post-mortem examination. The Investigating Officer, thereafter, inspected the place of occurrence. As per his evidence, he found some blood at the place of occurrence and he had seized the blood in presence of the witnesses by preparing the seizure memo. The place of occurrence was situated in between the houses of Sachchidanand Singh and that of the deceased Siya Singh where nads were fixed for feeding the animals and as may appears from the cross examination of P.W. 13, S.I.Bimlapati Singh, he did not find any drop of blood or any sign of blood fallen there and, as such, he did not seize the same. At the same time, he did not find any empty cartridge or any sign of other shots having fired also. He did not find any sign of shot at the house or around the place of occurrence indicating that any firing had been made and absence of blood was so conspicuous that even at the place where the dead body of Siya Singh was lying



in his Aangan was found devoid of it. Thus, what appears from the evidence of P.W. 13 is that in spite of the prosecution story that the occurrence had taken place at the place which had been described by the Investigating Officer (P.W. 13), no blood was found there though he had stated that he had seized the blood after preparing the seizure memo. The place where the deceased had died and his courtyard were also devoid of any blood and, as per the evidence of P.W. 13, it could be suggesting that while the deceased was being carried to his courtyard, naturally blood had fallen on the way.

4. The prosecution story was supported by P.Ws. 1,2,3,4,5,6,7 and 8 and they have stated the manner of occurrence as was stated by P.W. 6 Saligram Singh in his fardbeyan. The evidence produced by the witnesses was consistent that a mob of 18 persons came armed with guns, rifles and other weapons, like, lathi, etc. and this appellant Mishari Singh while ordering to kill Siya Singh had hurled abuses on him and himself had fired a shot which hit the deceased in the buttock and when he turned around accused Madan Singh fired another shot which hit in his neck. This is the consistent evidence of the witnesses and there does not appear contradiction in the evidence of the eye witnesses.

5. However, during cross-examination each and every witness was cross-examined to his earlier statement and it was suggested to him that during the course of examination by the police he had not made any statement as he was making in the court. P.W. 1 was cross-examined in paragraphs 3 and 4 of his evidence to his previous statements while P.W. 2 was cross-examined to his previous statement in paragraph 4. Likewise, P.W. 3 was cross-examined to his previous statement in paragraph 2 while P.W. 4 was cross-examined to his previous statement in paragraph 4 of his deposition. P.W. 5 was cross-examined to his previous statement in paragraph 3. P.W. 7 was cross-examined to his



previous statement in paragraph 2 while P.W. 8 had been cross-examined to his earlier statement in paragraph 7. P.W. 13, the Investigating Officer, was cross-examined in paragraph 12 in respect of the statement made by P.W. 1 Shivdani Singh and in respect of the statement made by P.W.2 Lalo Singh in paragraph 13. He was cross-examined in paragraph 15 as regards the statement made by P.W. 3 Indradeo Singh. He was cross-examined in paragraph 15 as regards the statement made by P.W. 4 Shakti Kumar and his statements were proved by P.W.13. In paragraph 16, like the statements of P.W.4 which were proved in paragraph 15, the statements of P.W. 5 Ramrup Singh were proved by the Investigating Officer (P.W. 13). The attention of P.W. 13 was drawn to the statements made by the informant in paragraph 16. Thus, what appears is that the witnesses who came to support the prosecution charges had never made statements before the Investigating Officer that the accused persons came variously armed with rifle, guns, etc and this appellant had fired the first shot which hit the deceased in his buttock and subsequently, accused Madan Singh fired another shot which hit the deceased in his neck. The manner of occurrence which was noted by the informant appears a bit not corroborated as oral evidence pointed out as if the shot fired by this appellant had hit in his left buttock but the P.W. 10 Dr. A.Wahaw had found one penetrating lacerated wound $\frac{1}{4}$ " above right buttock with inverted margin. Thus, the medical evidence was contradictory to the oral testimony.

6. What we find is that Village Chand Mao where the incident had taken place was inhabited by a particular caste and they were divided in two groups. It further appears from the evidence of the Investigating Officer that the deceased had formed a group of criminals with one Deonandan Singh and Deonandan Singh and the deceased were reported against in as many as seven substantive criminal cases. A list of those criminal cases was given by the



Investigating Officer in his deposition in paragraph 14 and we find that the deceased was accused in cases under Sections 457, 380, 307, 302, etc. of the Indian Penal Code. Thus the suggestion of the defence that the deceased might have been killed by some other on account of being a man of criminal antecedent appears very much probalised by the evidence of the Investigating Officer as he did not find any single drop of blood at the place of occurrence as also any sign of it in the courtyard where the dead body of the deceased was kept after being brought from the place where he was allegedly killed.

7. Some of the witnesses who were deeply interested to speak on the fact of groupism in the village were not coming before the police. Similarly P.W. 3 was feeling shy to appear before the police on 24.5.1985 to state the fact to it. P.W. 3 was avoiding his appearance before the police as P.W. 13 in his evidence in paragraph 15 stated that whenever he visited the village in search of P.W. 3 Indradeo Singh he could not trace out him and lastly he could meet him only on 1.5.1985 and what we find is that he had not made any statement before the Investigating Officer which he had made before him. Thus, what appears from consideration of the evidence of the witnesses is that their testimonies were fully contrary to what they had stated before him earlier indicating that they had not stated before the police as they had stated in the court.

8. It was submitted by Shri Dilip Kumar Sinha, learned Additional Public Prosecutor that the informant had filed a protest petition, but the cross-examination of the informant P.W. 6 indicates that he did not know as to what were the contents of the protest petition and what was the substantive material creating doubt in the Investigating Officer being not impartial and fair and the court could reject the evidence of the Investigating Officer. But, what we find from the record of this appeal is that the witnesses went on making statements

which were never made by then before the police. The Investigating Officer did not find any sign of firing at the place of occurrence. It is true that the deceased Siya Singh was murdered but there could have been some consistency in the evidence of the witnesses and the consistency on the material point and its trustworthiness was not found from the evidence of the witnesses.

9. In the result, the appeal succeeds and is allowed and the judgment of conviction and order of sentence are hereby set aside. The appellant is acquitted of the charges.

10. The appellant is on bail. He is discharged from the liability of his bal bond.

11. Smt. Shashi Priya Pathak has assisted us as Amicus Curiae and we direct that she be paid a fee of hearing by the Patna High Court Legal Services Committee. Let a copy of the first page and last of the judgment be given to the Amicus Curiae so that she may get a fee.

(Dharnidhar Jha, J)

(Amaresh Kumar Lal, J)

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