

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.194 of 1993

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Balmiki Mahto, son of Late Kali Mahto, R/o village- Fatehpur, P.S.-
Ashtawana, District- Nalanda..... Appellant

Versus

The State of Bihar..... Respondent

With

Criminal Appeal (DB) No. 265 of 1993

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Madan Mahto son of Late Kali Mahto, R/o village- Fatehpur, P.S.-
Asthawana, District- Nalanda..... Appellant

Versus

The State of Bihar Respondent

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Appearance :

For the Appellant/s : Mr. Kanhiya Prasad Singh, Sr. Adv.
Mr. Sudhansu Kumar Lal, Advocate

For the Respondent/s : Mr. A. K. Sinha, APP

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Against the judgment of conviction and order of sentence dated
15th April, 1993 passed by Shri Braj Bihari Sinha, 5th Additional
Sessions Judge, Nalanda at Biharsharif in Sessions Trial No. 39 of
1982 / 260 of 1990

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CORAM: HONOURABLE MR. JUSTICE V.N. SINHA

and

HONOURABLE MR. JUSTICE JITENDRA MOHAN SHARMA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE V.N. SINHA)

Date: 27-07-2015

These two appeals arise out of judgment/order dated
15.04.1993 passed by 5th Additional Sessions Judge, Nalanda at
Biharsharif in Sessions Trial No. 39 of 1982 / 260 of 1990
whereunder two appellants Madan Mahto and Balmiki Mahto have
been convicted for the offence under Section 302 of the Penal
Code, Section 27 of the Arms Act and Sections 302/34 of the
Penal Code respectively and sentenced to suffer rigorous
imprisonment for life. Appellant Madan Mahto has further been

sentenced for three years rigorous imprisonment under Section 27 of the Arms Act. His sentences have, however, been directed to run concurrently.

2. Prosecution case as set out in Asthawana P.S. Case No. 46 of 1981 scribed by Sarjug Sharma (PW 14) the Officer In-charge of Asthawan Police Station around 6:00 pm on 02.04.1981 is that around 3:30 pm his brother Shibo Yadav had taken the she buffaloes towards Borsiya Khanda situate adjoining South of the village where, after harvest of the Barley crops of accused Madan Mahto, bundles were being tied. One she buffalo of Shibo Gope strayed into the Barley field of Madan Mahto which led to altercation and apprehension of she buffalo by Madan Mahto who also snatched the stick of Shibo Gope and assaulted him with the same stick. Whereafter Madan Mahto proceeded towards his house with the she buffalo, Shibo Gope raised alarm, his father Prasadi Gope and brother, informant, Fakira Yadav came to the place of occurrence with whom also Madan Mahto altercated and said that he will teach them a lesson after returning from his house. After some times Madan Mahto, his brother Balmiki Mahto returned to the place of occurrence along with their father Kali Mahto, thereafter, Madan Mahto shot Prasadi Gope who died at the spot and the accused persons ran away towards village. Informant thereafter, came to Asthawana Police Station and lodged the FIR. Sarjug Sharma (PW 14),



Officer Incharge of Asthawana Police Station, having recorded the FIR came to the place of occurrence in the same evening around 7:30 pm and conducted inquest proceeding on the dead body of Prasadi Gope and found one gun shot injury on his person. The inquest proceeding was conducted in presence of Tilakdhari Yadav (not examined) and Krishna Yadav (PW 2). Having conducted the inquest, the FIR was dispatched from the Police Station to Biharsharif Court on 03.04.1981 through special messenger and was also seen by C.J.M., Nalanda on the same day. In the light of the contents of the FIR, further statement of the informant and Police statement of Shibo Yadav, Bishundeo Yadav as also others who came to the place of occurrence, chargesheet was submitted. In the light of chargesheet, cognizance was taken and the case was committed to the court of Sessions. The Sessions Court framed charges against three accused persons on 25.06.1990 to which the accused persons pleaded not guilty and claimed to be tried. During pendency of the trial father of both the appellants Kali Yadav left for heavenly abode and his trial abated which is evident from order dated 25.02.1992.

3. In support of the prosecution case, prosecution has examined as many as 14 witnesses. Defence has also examined two witnesses. Among the prosecution witnesses, PW 1 Bishundeo Yadav is the cousin of the informant and is named in



the FIR as the one who had come to the place of occurrence after the occurrence. PW 2 to PW 6 are Krishna Yadav, Lutu Yadav, Biro Yadav, Nagendra Yadav and Baleshwar Yadav respectively are also co-villagers but according to the FIR, are not the eye witnesses of the occurrence as they have also reached at the place of occurrence after the shot was fired. PW 7 Shibo Yadav is the man who had gone to the place of occurrence for grazing his she buffaloes and it is he with whom initial altercation had taken place between him and Madan Mahto which persuaded Madan Mahto to come back to the village and return with his father and another brother Balmiki Mahto and then shoot Prasadi Gope the deceased. PW 8 Fakira Yadav is the informant and son of the deceased. PW 9 Dr. Rajednra Prasad Singh is the Medical Officer of Nalanda Sadar Hospital who conducted post mortem. PW 10 Babulal Chaudhary, PW 11 Pragas Paswan, PW 12 Pachehu Tanti have been tendered. PW 13 Pancha Kumari is the daughter of the deceased Prasadi Gope and is said to have been picking cow dung from the place of occurrence at the time of occurrence. PW 14 is Sarjug Sharma the scribe of the FIR and Investigating Officer of the case. Defence witnesses, namely, DW 1 Bharteshwar Prasad Sinha is the Headmaster of Gautam Budha High School and has been examined to prove the alibi of the appellant Balmiki Mahto who has deposed that appellant Balmiki Mahto @ Balmiki Prasad Mahto is Science Teacher serving in his school and on the date,

time of occurrence was present in the school. DW 2 Mritunjay Kumar Singh is an Assistant Teacher serving in the same school and has also been examined to prove the alibi of appellant Balmiki Mahto @ Balmiki Prasad Mahto.

4. Learned counsel for the appellant has assailed the judgment of the trial court with reference to the evidence of informant, PW 8, Fakira Yadav, his brother PW 7 Shibo Yadav and their cousin PW 1 Bishundeo Yadav. It is submitted by learned counsel that as per prosecution story, narrated in the FIR, as also disclosed in the court by the aforesaid three witnesses, is that deceased Prasadi Gope was shot at by appellant Madan Mahto from a distance. In this connection, reference is made to the evidence of PW 7 Shibo Mahto, paragraph 10, where he has stated that the assailant Madan Mahto was away from his father by a distance of one bamboo. Informant, PW 7, Fakira Yadav in paragraph 19 of his evidence, has stated that appellant Madan Mahto shot his father only once from a distance of one bamboo. Having referred to the aforesaid evidence, learned counsel has pointed out the evidence of PW 1 Bishundeo Yadav, in paragraph 19, that he also corroborated the evidence of PWs 7 and 8 about the distance from which appellant Madan Mahto has shot the deceased father of the informant. Having referred to the aforesaid evidence of the three witnesses, learned counsel took us to the post mortem report of the deceased Prasadi Gope (Ext.



2) in column 4 whereof the Autopsy Surgeon has categorically stated that after examination one lacerated wound of size 2” in diameter on left side of chest external to left nipple and entering into chest cavity. Margin of the wound is burnt around it and indrawn (inverted). It is submitted with reference to the medical evidence that the evidence of the prosecution witnesses PWs 7, 8 and 1 that appellant Madan Mahto shot the deceased Prasadi Gope from a distance of one bamboo does not appear to be correct as the distance from which shot was fired on Prasadi Gope being one bamboo, there was no occasion for the entry wound to have caused burn on its indrawn inverted margin which is indicative of the fact that the prosecution witnesses have not seen the occurrence but are deposing as eye witnesses giving a version which is not corroborated by the medical evidence.

5. Under the circumstances, we have no option but to allow these appeals, set aside the judgment and order of conviction and sentence granting benefit of doubt to the appellants. Both the appellants are discharged form the liabilities of their bail bonds.

(V.N. Sinha, J)

(Jitendra Mohan Sharma, J)

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