

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.233 of 1992

Arising out of PS.Case No.-13 Year-1986 Thana-Jehanabad District-Gaya

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1. Rajdeo Mahto.
 2. Mahendra Mahto, both sons of Ram Ratan Mahto
 3. Bisheshwar Mahto, Son of Komal Mahto.
- All residents of village Nirpura, P.S. Makhdumpur, residing at village Sundarpur, P.S. Jehanabad, District Jehanabad.

.... Appellants

Versus

The State of Bihar

.... Respondent

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Appearance :

For the Appellants : Smt. Sudha Ambastha, Amicus Curiae

For the State : Sri Abhimanyu Sharma, APP

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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: 19-01-2015

The three appellants were charged by the learned 9th

Additional Sessions Judge, Gaya for committing offences under Sections 302/34 of the Indian Penal Code and 27 of the Arms Act for being tried in Sessions Trial No. 19 of 1991 / 184 of 1987. By judgment dated 15.05.1992, the three appellants were held guilty of committing offence under Section 302/34 of the Indian Penal Code. However, appellant Bisheshwar Mahto was acquitted of the charge under Section 27 of the Arms Act while appellants Rajdeo Mahto and Mahendra Mahto were held guilty of committing the said offence. After being heard on sentence, the appellants were directed to suffer rigorous imprisonment for life under Sections 302/34 of the Indian Penal Code, but no separate sentence was passed upon Rajdeo

Mahto and Mahendra Mahto under Section 27 of the Arms Act.

2. The prosecution case, as per the First Information Report lodged by Akhileshwar Narayan Sinha (P.W.5), was that on 23.01.1986 he along with Arjun Prasad Singh (P.W.1), Sri Krishna Singh (not examined), Rambali Singh (P.W.3), Vishun Deo Singh (P.W.2), Prayag Nand Singh (not examined) and others of village Sundarpur had gone to Jehanabad. Arun Kumar (P.W.4) of village Jamuawan was also with him. They were returning to their respective villages from Jehanabad and during that course, they were being followed by the three appellants. When the informant and his companions had reached the periphery of village Jamuawan, it was alleged that the three appellants changed their route and went ahead of the informant and his companions to reappear with pistol and other weapons and started firing shots at Ranjeet Singh, the deceased, who fell down there. As per the First Information Report, five shots were fired by the accused persons and after killing Ranjeet Singh, they ran away towards west.

3. The motive or reason for the occurrence, as stated by P.W.5, was that some litigation was pending between the sister of Arun Kumar (P.W.4) on the one hand and the accused persons on the other in respect of some land and deceased Ranjeet Singh used to look after the litigation on behalf of the sister of P.W.4 Arun Kumar. 23.01.1986 was a date fixed before Sri J.N. Das. As regards the

informant, he stated that he had come to Jehanabad for purchasing articles for the *Shraadh* ceremony of his father and that the deceased was his cousin.

4. Due to non-examination of the Investigating Officer, we are deprived of the benefit of his evidence so as to knowing as to how he had proceeded in investigation of the case by taking steps, like, inspecting the place of occurrence or seizing incriminating materials. However, it is clear that after recording the First Information Report (Ext.1), the police had come from Paras Bigha camp which was nearby, held the inquest upon the dead body and the same was sent for post-mortem examination which was conducted by Dr. Ram Padarath Singh (P.W.7) who prepared the post-mortem examination report (Ext.2). After finding the material sufficient, the three appellants were sent up for trial.

5. The defence of the appellants was of innocence and false implication.

6. Eight witnesses were examined by the prosecution out of whom P.W.6 Ram Daman Sharma had identified the writings of the First Information Report while P.W.8 Muzaffar Hussain had proved the first paragraph to the last paragraph of the case diary. P.W.1 Arjun Prasad Singh had been examined in chief and was cross-examined for a few lines also but as may appear from the evidence of P.W.5 Akhileshwar Narayan Sinha in paragraph-10, he

did not come for further cross-examination and as may appear from the impugned judgment, the learned trial Judge excluded his evidence from his consideration. The charges were supported by P.W.2 Vishun Deo Singh, P.W.3 Ram Bali Singh, P.W.4 Arun Kumar and P.W.5 Akhileshwar Narayan Sinha.

7. Two contentions were raised before us. It was contended by Smt. Sudha Ambastha, the learned Amicus Curiae appearing in the appeal that it remains a riddle as to why in spite of police having reached just in a few minutes of the incident, none of the witnesses who had been eye witnesses to the occurrence, could give any statement, though on their own showing they were very much present there and lastly, why P.W.5 Akhileshwar Narayan Sinha took about 15½ hours to lodge the report in respect of an occurrence which had taken place very much in his presence. It was contended that the witnesses were pondering over the question as to what should be the fact which should be placed before the police and who should be implicated in the case. Submission was that it was a blind murder and no one had really seen it being committed and on account of the admitted land dispute between the parties, a false case was instituted. Submission further was that the falsity of the charge could be appreciated from the fact that P.Ws. 2, 3 and 4 had given evidence as if only three shots were fired but P.W.5, the informant of the case, stuck to his initial version that five shots were fired so as to

killing the deceased. Submission was that the evidence of witnesses appears indicating as if they had not been present there and it was an imaginary story of individual participation by appellants, as they had stated.

8. Sri Abhimanyu Sharma, the learned Additional Public Prosecutor was pointing out that the evidence was consistent and was supported by the medical evidence and the judgment was to be upheld.

9. There is no dispute in it that the witnesses who had deposed in the case were highly interested. P.W.1 Arjun Prasad Singh whose evidence was excluded from being considered was the full brother of P.W.5 Akhileshwar Narayan Sinha and P.W.2 Vishun Deo Singh was the brother of the deceased Ranjeet Singh. P.W.3 Ram Bali Singh had admitted in paragraph-12 that the informant was his relative and one of his cousins, like, the deceased Ranjeet Singh. P.W.4 Arun Kumar was the brother of Marun Devi, a widow who had been widowed quite early in her age at about 18 years and as per suggestion given to P.W.4 and others, the deceased Ranjeet Singh was probably carrying on an illicit relationship with her and was, as such, interested in her litigation by looking after the proceedings in the court. Admittedly, there was a 145 proceedings and also a title suit bearing No. 29 of 1984, as may appear from the probability arising out of the evidence of P.W.4 in paragraph-6, the decision of



which could have gone in favour of her. Ratia Devi had two full brothers including P.W.4 but, none of them used to attend to her litigation as appears from the evidence of P.W.4 in paragraph-7 when he stated that neither he nor his brother used to look after either the land of their sister or her litigation. This line appears at the end of page no. 26 and at the top of page no. 27 of the paper book. Thus, the interestedness of Ranjeet Singh with Ratia Devi could be gathered from the fact that the deceased who was an unmarried fellow was looking after the affairs of a widow with whom he did not have any concern.

10. In the above background, the witnesses were pointing out that they were coming from Jehanabad in a group to their respective villages so as to be eye witnesses. P.W.4 Arun Kumar, the brother of the lady Ratia Devi was stating that he did not go to his village and rather moved on the road towards the village of the witnesses so as to seeing them off. We do not see any reason as to why when all were coming together from Jehanabad, P.W.4 should not turn towards his village and instead travel further ahead of his village on the pretext of seeing the witnesses off. In fact when we were considering his evidence in paragraph-8, we could find out that he was probably set up to state many things. He was not giving any personal details even about the marriage of deceased Ranjeet Singh and was still claiming himself to be a witness on some aspects



of the case. This is the degree of interestedness and that is why, we see the shift in evidence made by the witness when they, like, P.Ws. 2, 3 and 4 were stating that three shots were fired at the deceased whereas P.W.5 Akhileshwar Narayan Sinha was stating that in fact five shots were fired. It was true that the story of firing of five shots was very much there in the fardbeyan and also reiterated in the evidence of P.W.5, but on perusal of evidence of P.W.7 Dr. Rampadarath Singh, what we found was that there were only four shots fired and the number of injury which was five was on account of injuries no. 2 and 3 communicating to each other due to being corresponding wounds of entry and exit. Thus, the evidence of P.W.5 appears not corroborated by P.W.7.

11. The most important feature of the case was that all witnesses admitted that in a few minutes of the occurrence, the police had reached there and had stayed there for quite sometime. P.W.2 stated that he had gone back home, but came back when he learnt that the police had arrived and he stayed there. The same was the evidence of P.Ws. 3 and 4. The informant, P.W.5 Akhileshwar Narayan Sinha, also stated that the police had come at the place of occurrence but no one gave any statement to the police. We do not see any reason as to why in spite of arrival of the police and its stay for a very long time at the place of occurrence, the witnesses who deposed as eye witnesses in the court, were so shy of giving their



statements before the police so as to lodging the report. There was suggestion given to the witnesses in the form a direct question as to whether they deliberated between themselves as also with others as to what should be the form of the case and who should be named as accused. The witnesses do appear stating that they did not deliberate between themselves about the lodging of the report. However, we do have an inkling that they had lodged the report after due deliberations and consultations as we do not see any convincing reason as to why the First Information Report was lodged on 24.01.1986 at 8.30 A.M. in respect of the occurrence which had taken place on 23.01.1986 at 5 P.M. We in fact find a probability emerging from the evidence that the witnesses either had not been present at the scene of occurrence or if they were present, they could not identify the real assailants and had bought time instead, and after due deliberations and consultations had lodged the First Information Report and had also falsely deposed in the case so as to ensuring that the charges were established and, further, the appellants were convicted and sentenced.

12. In view of the inference which we have drawn on the merits of the case and the probabilities which arise out of it, we find that it was doubtful that the appellants had committed the murder of deceased Ranjeet Singh.

13. In the result, the appeal succeeds and the same is allowed. The judgment of conviction and order of sentence dated

15.05.1992, passed by the learned 9th Additional Sessions Judge, Gaya in Sessions Trial No. 19 of 1991 / 184 of 1987 are hereby set aside. The appellants are acquitted of the charges they had been held guilty of. They appellants are on bail. They shall stand discharged from the liabilities of their respective bonds.

14. We have been assisted by Smt. Sudha Ambastha, who was appointed Amicus Curiae to assist this Court today itself. We direct that Smt. Ambastha be paid the prescribed fee of one hearing by the Patna High Court Legal Services Committee for assisting the Court.

(Dharnidhar Jha, J.)

(Amaresh Kumar Lal, J.)

Sanjay/N.A.F.R.

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