

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.129 of 1992

Against the judgment of conviction dated 25.04.1992 and order of sentence dated 27.04.1992, passed by learned Ist Additional Sessions Judge, Rohtas at Sasaram, in Sessions Trial No. 273/9 of 1989/1990, arising out of Dinara P.S. Case No. 115 of 1988.

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1. Baban Ram @ Baban Dusadh @ Bababan Dusadh, Son of Late Man Bahal Ram, resident of Village-Dhanpura, Police Station-Dinara, District-Rohtas.
 2. Ram Nath Sah @ Ram Nath Kanu, Son of Late Pragash Sah, resident of Village- Tenduni, Police Station-Kargahar, District-Rohtas.
 3. Suresh Kanu @ Suresh Sah, Son of Ram Bhajan Sah, resident of Village- Velari (Bichili), Police Station- Dinara, District-Rohtas.
 4. Krishna Koiri, Son of Sri Bhabhichhan Koiri, resident of Village- Velari (Bichili), Police Station-Dinara, District- Rohtas.
 5. Babu Ram @ Babu Ram Dusadh, Son of Late Ram Dayal Ram, resident of Village-Arang, Police Station-Dinara, District- Rohtas at Sasaram.

.... Appellants

Versus

The State of Bihar

.... Respondent

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Appearance :

For the Appellants : M/S. Ram Chandra Singh, Mahendra Prasad Yadav & Jitendra Kumar Singh, Advocates.

For the Respondent : Mr. Mayanand Jha, A.P.P.

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE SUDHIR SINGH

ORAL JUDGMENT

(Per: HONOURABLE JUSTICE SUDHIR SINGH)

Date: 26-06-2015

This appeal has been filed against the judgment of conviction dated 25.04.1992 and order of sentence dated 27.04.1992, passed by Sri Ram Nath, Ist Additional Sessions Judge, Rohtas at Sasaram, in Sessions Trial No. 273/9 of 1989/1990, by which all the five appellants, namely, Baban Ram @ Baban Dusadh @ Bababan



Dusadh, Ram Nath Sah @ Ram Nath Kanu, Suresh Kanu @ Suresh Sah, Krishna Koiri and Babu Ram @ Babu Ram Dusadh were found guilty of committing the offence under Sections 302/149 of the Indian Penal Code and were sentenced to suffer rigorous imprisonment for life, whereas the appellant no. 1 Baban Ram @ Baban Dusadh @ Bababan Dusadh, appellant no. 3 Suresh Kanu @ Suresh Sah and appellant no. 5 Babu Ram @ Babu Ram Dusadh were also found guilty of committing the offence under Section 27 of the Arms Act and were sentenced to suffer further rigorous imprisonment for one year. The sentences are directed to run concurrently.

Out of the aforesaid five appellants, appellant no. 2 Ram Nath Sah @ Ram Nath Kanu and appellant no. 5 Babu Ram @ Babu Ram Dusadh died during pendency of the present appeal. Hence, the appeal in so far as they are concerned were treated as abated vide orders dated 10.12.2014 and 30.01.2015 respectively passed by this Court.

The prosecution case, as per the fardbeyan of the informant Rameshwar Singh (P.W.7) recorded on 18.12.1988 at about 8.45 P.M. at Village- Parariya, P.S. Dinara, District-Rohtas, by Sri S. P. Singh, the Officer-in-charge of Dinara Police Station, is to the effect that on 18.12.1988 at 3.30 P.M. P.W. 7 and his brother Kesho Singh, were



present at their home and in the meanwhile, P.W. 7 heard the sound of gun firing towards south west corner of the village and some body also told him that some miscreants have encircled his brother Banshidhar, and were trying to kill him. Thereupon P.W. 7 and his brother Kesho Singh are said to have run towards the place of occurrence (P.O.) and found that his brother Banshidhar was running towards the barn of one Baliram Singh from his own barn and that the accused Hirdayanand Sharma armed with D.B.B.L. gun, Suresh Kanu with rifle, Baburam Dusadh with D.B.B.L. gun, Kanhaiya Koiri empty handed, Jagdish Sharma with rifle, Baban Dusadh with D.B.B.L. gun, Naga Teli with rifle, Ramnath Kanu and 2-3 unknown were chasing and firing on his brother. He said that Hirdayanand Sharma fired at the head of Banshidhar due to which fell down in a ditch in the northern side of the barn of Baliram Singh. In the meanwhile, the accused Suresh Kanu is said to have fired on him and his brother Kesho Singh, with an intention to kill them, but he ran away and hidden and the accused persons started searching them, but went away towards the northern side of the village. In the meanwhile, he is said to have gone to his brother Banshidhar but found him dead due to gun shot injury. P.W. 7 further stated that the lady inmates also told him that the miscreants went to their home in a search of him and



his brother Kesho Singh, and they have stolen away their clothes, ornaments etc., from the house. The reason for this incident stated by P.W. 7 is that one year ago, the police made a raid and chased the accused persons up to the village Hasnadih and the accused Hirdyanand Sharma was giving shelter or harbouring the aforesaid miscreants in his house and this was protested by him and his brothers, and thereupon the accused Hirdayanand Sharma managed a gang of the miscreants and killed his brother.

Thereafter, the police recorded the statement of the informant and instituted Dinara P.S. Case No. 115 of 1988 alleging offences punishable under Sections 147, 148, 149, 448, 302, 307, 380 of the Indian Penal Code and 27 of the Arms Act. The police, thereafter, investigated the case and submitted the charge sheet. The S.D.J.M., Bikramganj, took cognizance of the offences and committed the case to the Court of Sessions for trial and from there it was transferred to the Court of learned 3rd Additional Sessions Judge, Sasaram, for disposal. On transfer it has been heard and disposed of by the court of learned Ist Additional Sessions Judge, Rohtas.

It would not be out of place to mention here that the aforesaid accused persons and one Hirdayanand Sharma were put on trial but during the pendency of the case, the case of Hirdayanand

Sharma was separated on account of his mental derailment and these five accused persons are only faced trial. Hridayanand Sharma was acquitted in Sessions Trial No. 273/101 of 1989/93 vide judgment dated 18th September, 1996.

We heard the learned counsel for the appellants and learned Additional Public Prosecutor in detail and have gone through the record.

The entire case turns around the version presented by P.W. 7, the brother of the deceased and the support, which he received from the other witnesses.

P.W. 7(informant), P.W. 5, P.W. 1, P.Ws. 3 and 4 have claimed themselves to be eye witnesses to the occurrence. P.W. 7 stated that on hearing the sound of firing, he and his brother Kesho Singh(P.W. 4) went towards place of occurrence and there he saw that the accused Hridayanand Sharma fired on his brother Banshidhar due to which he fell down and that accused Suresh Kanu also attempted to kill him but he ran away from there. After the occurrence, the accused are said to have gone to his house and also the house of his brother and when he returned back, he saw his brother Banshidhar Singh was dead and lying in a ditch.

P.W. 5 Ramprit Singh stated that at the time of occurrence,



he himself and Banshidhar were at his barn i.e., the place of occurrence. The deceased was also at the barn i.e., place of occurrence and in the meanwhile he saw 7 or 8 persons passing away through the house of Banshidhar Singh. It is claimed by this witness that the accused had also fired upon him but he managed to escape and that they chased Banshidhar and killed him in the nearby barn of Baliram Singh. He has named all the accused persons in his evidence. As per him Hirdayanand Sharma had killed Banshidhar. This witness did not mention that P.W.7 (informant) was also present at the time of occurrence nor has he stated that any firing was made upon P.W. 7 in course of occurrence. Similarly P.W. 7 did not state that P.W. 5 was present at the time of occurrence.

As far as the evidence of P.W. 1 is concerned, he has also claimed to be an eye witness but has given a different version about the incident. He stated that he was working in the barn alongwith the deceased and he saw, 9-10 persons causing injury to the deceased and the deceased was chased by the assailants, but ultimately died by falling in a ditch nearby his barn. He further stated that the accused persons came to him and asked his caste, upon which he told that he is a Harizan. If the evidence of P.W. 7 and P.W. 5 is examined, it becomes clear that none of them spoke about the presence of P.W. 1



at the time of occurrence. P.W. 1 also did not mention about the presence of P. Ws. 7 and 5. His statement that the accused came to him and asked about his caste is not supported by P.Ws. 7 and 5. This witness has not supported the allegation made on behalf of P.W. 7 that he was fired at P.W. 4 has not been supported by P.W. 1, rather he has stated that after killing the deceased the accused went away.

P.W. 3 in his evidence has stated that at the time of occurrence himself, his brother and a labourer were working in the barn and he saw 10-12 persons were chasing Banshidhar, they fired a gun shot and the deceased fell down in a ditch near his barn. This witness has not named the accused persons nor did he state that the occurrence was witnessed by other witnesses like P. Ws. 7,5 and 1.

P.W. 4 is the brother of P.W. 7. He claimed to have accompanied P.W. 7 to the place of occurrence and seen the deceased running away. He named the accused persons. According to him, they were chasing the deceased and ultimately they killed him. He has specifically stated that the accused Hirdayanand Sharma killed the deceased. He has further stated that the accused persons also tried to kill him and his brother P.W. 7 but they ran away and saved their lives. This witness has nowhere stated as to when he reached the place of occurrence or has seen P. Ws. 5, 1 or 3 at the place of occurrence.

P.W. 8 is the doctor who has conducted post mortem of the deceased. From perusal of post mortem report, it would appear as many as seven injuries are said to have been found upon the deceased.

Though P. Ws. 7, 5, 1, 3 and 4 have claimed to be eye witnesses, they have failed to mention the number of injuries caused upon the deceased. As per the evidence of these witnesses, Hirdayanad Sharma had fired upon the deceased and due to the said injuries, the deceased died. Presence of number of injuries on the body of the deceased casts a serious doubt upon the evidence of these witnesses. Further, none of the five witnesses have disclosed in their evidence that they have seen the other witnesses, at the time of occurrence. This can not be over looked particularly when they claim to be eye witnesses. P.W. 1 presented on altogether a different version viz that after committing the offence the accused come to him and asked about his caste. None of the other witnesses have spoken about this. It is also important to note that the Investigating Officer has not been examined in the present case. This is a very serious lapse on the part of the prosecution.

In our endeavour to ensure that none of the relevant facts miss our attention, we have gone through the entire record carefully. What we find from them is that there is hardly any consistency

between the version presented in the fardbeyan and the evidence adduced in the trial. Viewed from any angle, we find that the prosecution failed to prove its case against the appellant nos. 1, 3 and 4 herein. We, therefore, allow the appeal and set aside the conviction and sentence ordered by the trial court.

Since the appellant no. 1 Baban Ram @ Baban Dusadh @ Bababan Dusadh, appellant no. 3. Suresh Kanu @ Suresh Sah and appellant no. 4 Krishna Koiri are already on bail, their bail bonds shall stand cancelled.

(L. Narasimha Reddy,CJ)

(Sudhir Singh, J)

A.F.R.
U.K./-Patna High
Court.

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