

IN THE HIGH COURT OF JUDICATURE AT PATNA

Govt. Appeal (DB) No.3 of 2015

Arising Out of Mehandia PS.Case No. -05 Year 1999 Thana -Parasi District- JEHANABAD

1. The State of Bihar

.... Appellant/s

Versus

1. Birendra Sharma Son of Srikant Sharma
2. Butan @ Braj Kishore Sharma Son of Late Bhaso @ Bhrigunandan Sharma
3. Kaushal Kishore Sharma Son of Bhaso @ Bhrigunandan Sharma
4. Nawal Kishore Sharma Son of Bhaso @ Bhrigunandan Sharma
5. Nawal Kishore Sharma Son of Ramgati Sharma
6. Baban Singh Son of Late Kameshwar Singh
7. Bhagwan Sharma Son of Sheodeni Sharma
8. Ashok Sharma Son of Laxminidi Sharma
9. Manoj Sharma Son of Brahmanand Sharma
10. Dharmendra Sharma Son of Janardan Sharma
11. Gopal Sharma Son of Late Jamuna Sharma
12. Manoj Sharma @ Shankar Dayal Son of Baikunth Singh
13. Raju @ Om Prakash Singh Son of Late Sadhu Singh
14. Mantu Sharma Son of Late Nageshwar Sharma
15. Amrendra Sharma Son of Janardan Sharma
16. Sahendra Sharma Son of Shyamsundar Sharma
17. Sheo Sharma Son of Shyamsundar Sharma
18. Gauri Sharma Son of Late Lal Mohan Sharma
19. Radha Raman Sharma Son of Sidhnath Singh
20. Mantu Sharma @ Umashnakar Pandey Son of Late Lal Mohan Sharma
21. Umesh Sharma Son of Late Ram Akwal Sharma All residents of village - Dhobi Bigha (Parampura), P.S. Rampur Chauram, District - Arwal
22. Bihari Sharma @ Govind Sharma Son of Late Sheo Sharma
23. Bijendra Sharma Son of Ram Akwal Sharma Both of Kamata, P.S. Parasi and village - Rampur Chjauram, P.S. Rampur Chauram respectively District - Arwal
24. Dharma Sharma @ Dharma Singh Son of Late Sheo Sharma resident of Kamta, P.S. Parasi, District - Jehanabad

.... Respondent/s

Appearance :

For the Appellant/s : Mr. Dilip Kumar Sinha, APP

For the Respondent/s : Mr.

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE

and
HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

Date: 24-08-2015

1. This is an appeal on behalf of the State of Bihar, under Section 378 of the Code of Criminal Procedure (hereinafter referred to as the Cr.P.C.), against the judgment of learned Additional Sessions Judge, Ist, Jehanabad, in Sessions Trial No. 44/2005/283/2005 and Sessions Trial No. 283/2005/65/2007, whereby he has recorded acquittal of the respondents, who were put on trial, in relation to an occurrence, which had taken place, on 25.01.1999, in Village Shankar Bigha, under Mehanida Police Station of Jehanabad District, in which 22 persons were killed.

2. From the judgment of the learned trial Court, we find that Mehandia P. S. Case No. 05 of 1999, which subsequently gave rise to the Sessions Trials as mentioned above, was registered on the basis of *fardbeyan* of one Pragas Rajbanshi. The first informant has alleged that on the date of occurrence, i.e., on 21.05.1999, at 8.30 P.M., he was going to a Temple with his brother, Jully Rajbanshi, when he saw nearly 30-40 persons armed with rifles, who greeted the informant by

saying "Lalsalam". They caught hold of the informant and his brother and threatened that if they raised any alarm, they would be shot dead. They were flashing torch-lights. The informant and his brother, namely, Jolly Rajbanshi, recognized the persons with the aid of the torch light and moonline as Baban Singh (respondent No.6), Butan Sharma (respondent No.2), Kaushal Kishore Sharma (respondent No.3), Nawal Kishore Sharma (respondent No.4), Ashok Sharma (respondent No.8), Bhagwan Sharma (respondent No.7), Arvind Sharma (respondent no.8), Manoj Sharma (respondent No.9), Manoj Sharma, son of Brahamanand Sharma (respondent No.10), Birendra Sharma (respondent No.11) Nawal Sharma (respondent No. 12), Gopal Sharma (respondent No.13), Manoj Sharma (respondent No.14), Dharmendra Sharma (respondent No.15), Vinay Sharma (respondent No.16), Sheo Sharma (respondent No.17), Mantu Sharma (respondent No.18), Ravindra Sharma (respondent No.19), Amrendra Sharma (respondent No.20), Sahendra Sharma (respondent No.21), Umesh Sharma (respondent No.22), Gauri Sharma (respondent No.23), Mantu Sharma. Altogether 24 persons were named in First Information Report, who were recognized by the informant. They took the informant and his brother to



their house and one Jamuna was taken to Dalan of Mahil Paswan. The informant claims to have managed to escape from the clutches of these persons, who were armed with deadly weapons. According to the first informant, all the persons were members of *Ranbir Sena*. In his *fardbeyan*, the first informant has also stated that the said miscreants resorted to indiscriminate firing whereafter they fled away towards east-north direction of the village. After the occurrence had taken place, the informant and the villagers reached the place of occurrence and found 19 persons, namely, Lakhrapiya Devi, Jiraman Devi, Jas Mohan Sao, Lalita Kumari, Lalti Kumari, Bhabhikshan Ram, Chaukidar, Mahali Paswan, Santosh Paswan, Domani Devi, lothi Kumari, Nanhaki Kumari, Sohrai Rajbanshi, Janki Devi, Munnar Kumari, Gyahti Kumari, Ganga Paswan, Dashai Rajbanshi, Umesh Thakur had been shot dead. 12 to 14 villagers, other than the said deceased, had also sustained fire arm injuries, who were taken to hospital for treatment.

3. On the basis of the *fardbeyan* of the said informant, Pragash Rajbanshi, Mehandia P.S. Case No. 05 of 1999 was registered, on 26.01.1999, disclosing offences punishable under Sections 147,148,149,324,307,302 of the



Indian Penal Code, Section 27 of the Arms Act and Section 3 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, naming the aforesaid accused persons along with 16 other unknown persons. The Police took up investigation thereafter and submitted *charge-sheet* No. 12 of 1999, dated 10.04.1999, against 28 persons, which included those, who were named in the First Information Report for the offences punishable under Sections 147, 148, 149, 452, 326,307,302, 120B of the Indian Penal Code read with Section 27 of the Arms Act, 1959, and Section 3(i) (ii) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. On 24.10.1999, the police submitted supplementary *charge-sheet* No. 81 of 1999 against two persons, namely, Dharma Singh and Shivjee Singh. Another supplementary *charge-sheet* was submitted by the police, on 26.06.2000, for the same offences against 13 other persons.

4. Learned Additional Chief Judicial Magistrate, Jehanabad, vide his order, dated 17.11.2000, took cognizance of the offences on the basis of the aforesaid three charge sheets submitted by the police. Another supplementary charge-sheet was submitted on 15.98.2003 by the Police vide charge-sheet No. 37 of 2003 against one Bhrahmeshwar Singh



(Mukhiya). Some of the persons against whom the charge-sheets were submitted by the Police, namely, Mukesh Singh, Bhim Singh, Binay Singh, Janu Singh, Arvind Singh, Guddu Singh, Pankaj Singh, Bijay Singh, Sant Sharma, Pintoo Sharma and Amit Singh were discharged vide order dated 09.10.2003, on the ground that no sufficient material was there to proceed against them.

5. Thus, altogether 41 accused persons were sent up for trial.

6. Out of 41 persons, 28 appeared before the Court and since rest 13 accused persons were in custody in connection with different other cases, production warrants were issued for their appearance. The case was committed to the Court of Sessions, after the 28 accused persons appeared before the Court and case of rest of the 13 accused persons was separated. Subsequently, case of respondent No.24 was separated because of his long absence at the trial. He was declared absconder by the trial Court by an order dated 08.08.2011 and a permanent warrant of arrest was issued against him. He was, however, subsequently, produced on remand as he was in custody in connection with Mehandia P.S. Case No. 126 of 1997. Respondent Nos. 1 to 23 were charged



of the offences punishable under Sections 147,148,149,324,326,452,307,302, 120B of the Indian Penal Code, Section 27 of the Arms Act and Section 3(ii) (v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. Respondent No. 24 was charged of the offences punishable under Sections 148,302,149 IPC, Section 27 of the Arms Act and Section 3 (ii) (v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. Since they denied the charge framed against them, the trial against them proceeded, which finally resulted into their acquittal by the order of the learned trial Court which is under challenge in the present appeal.

7. Mr. Dilip Kumar Sinha, learned Additional Public Prosecutor, appearing on behalf of the appellant, State of Bihar, while assailing the learned trial Court's judgment has not taken such plea that any evidence adduced by the prosecution at the trial has incorrectly been described, in the impugned judgment of acquittal, by the learned trial Court. He has, however, submitted that the learned trial Court ought to have taken into account the magnitude of the offences and the fact that the witnesses, out of fear, could not support the prosecution's case as narrated by the Informant in his *fardbeyan*.

8. In response to a query made by us, he failed to point out any evidence, which was adduced at the trial, incriminating any of the accused-respondents, let alone material evidence, before the Court below, to support accusation against the respondents.

9. We have perused the judgment under appeal. It appears from the learned trial Court's judgment that altogether 50 witnesses were examined, P.Ws. 1, 3, 12, 13, 23, 28, 29, 32, 33, 34, 36, 40, 41, 43, 46 and 47 were found to be hear-say witnesses, who were, admittedly, not present at the time of occurrence. P.Ws. 30, 31, 37, 38, 39, 41, 42, 43, 44, 45, 48, 49 and 50 have expressed their ignorance about the knowledge of the incident and have not claimed to have recognized/identified the persons involved in the commission of the offences. P.W. 35, the witness of seizure, claims that 22 persons were killed in the occurrence, but he has made it clear that no one had disclosed the names of the assailants. He deposed that he had not recognized the assailants or culprits. The said witness was declared hostile at the request of the prosecution, nothing could be elicited from the cross-examination to bring home any evidence against the charges framed against the accused respondents.



10. The informant, Pragash Rajbanshi, was examined as P.W.10. In his evidence, at the trial, he has deposed that he had not lodged any case and he was not in a position to say as to who had lodged the case. He has deposed that at the relevant date and time of the occurrence, he had gone to another village, Daulatpur, and on his return, he found dead his two nieces. The informant himself was declared hostile by the Court at the request of the prosecution, but nothing was elicited to show that the accused-respondents or any of them, were involved in the alleged occurrence. We further find that other witnesses, namely, P.Ws. 7, 8,9,14 and 16, too, were also declared hostile at the request of the prosecution by the Court as they did not support the accusation against the persons facing trial, but their cross-examination also do not bring forth any incriminating materials against the accused-respondents.

11. Upon perusal of the learned trial Court's judgment of acquittal, we find that none of the witnesses, in their evidence, at the trial, supported the accusations against the accused-respondents. There being no evidence to support to accusation against the respondents, learned Additional Sessions Judge-I, Jehanabad, recorded judgment of their

acquittal.

12. In order to assail the impugned judgment of the learned trial Court, in the present petition of appeal filed by the State of Bihar, following grounds have been taken:-

- I. *For that the impugned judgment is illegal, perverse against the facts and evidence on record.*
- II. *For that this is a case of ghostly(sic) murder of 22 persons by resorting fire arms by the miscreants and several others sustained fire arm injuries.*
- III. *For that required opportunity was not given to examine the I.O. and Doctors who examined the injured persons and conducted the post mortem of the deceased.*
- IV. *For that although most of the prosecution witnesses were declared hostile but their substratum of evidence which supports the prosecution case ought to have relied upon.*
- V. *For that findings of the learned trial Court is erroneous and contrary to the natural justice.*
- VI. *For that impugned judgment is otherwise bad in law and fit to be set aside.”*



13. We have perused the petition of appeal and the judgment of learned trial Court under challenge and we have heard learned Additional Public Prosecutor in support of present appeal filed by the State of Bihar. We have given our anxious consideration to the contents of the petition, the judgment of the learned trial Court under challenge and the submissions made on behalf of the appellant.

14. On a close scrutiny of the evidence on record, we are of the considered view that there was no evidence before the learned trial Court and nothing has been pointed out by the learned Additional Public Prosecutor to us, on the basis of which, involvement of the respondents in commission of the offences, for which they were charged and put on trial, could be said to be proved. The State of Bihar has failed to make out any case in the present appeal against acquittal or that the approach made by the learned trial Court to the consideration of evidence and the trial is vitiated because of some manifest illegality. No part of evidence of such witnesses, who were declared to be hostile at the trial, has been pointed out by learned Additional Public Prosecutor, which could have been taken into account by the learned trial Court for reaching conclusion of guilt against any of the accused-respondents.



15. On consideration of the evidence adduced at the trial, the conclusion recorded in the judgment under challenge cannot, in our opinion, be said to be such, which could not have been possibly arrived at by any Court. It is, rather, evincible from the learned trial Court's judgment that the prosecution failed miserably, to prove its case at the trial.

16. We do not find any reason, apparent from the judgment of the trial Court under appeal, so compelling, which would require this Court to interfere in exercise of appellate jurisdiction under Section 378 of the Code of Criminal Procedure. Howsoever be the magnitude of crime or an offence, the burden heavily lies on the prosecution to prove accusation beyond all reasonable doubts.

17. In the present appeal, we find that not even a single witness claimed to have identified the respondents responsible for commission of the offence. Nothing has been pointed out to us by learned counsel, representing the appellant State, which, according to him, was incriminating against the respondents and which the learned trial Court failed to take note of.

18. Upon examining the petition of appeal and the judgment of the learned trial Court under challenge and

considering the submissions made on behalf of the appellant, we are of the considered view that no sufficient ground for interfering with the judgment of the learned trial Court, recording acquittal of the accused-respondents has been made out.

19. This appeal, therefore, deserves to be dismissed at this stage itself, and is, accordingly, dismissed.

(I. A. Ansari, ACJ)

(Chakradhari Sharan Singh, J)

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