

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.467 of 1992

Arising out of PS.Case No.-21(1) Year-1980 Thana-Sasaram District- SASARAM (ROHTAS)

- =====
1. Munir Mian (since dead), Son of Mehtar Ali Mian.
 2. Kapil Yadav, Son of Narsingh Yadav.
 3. Md. Hadis, Son of Aash Mohammad Mian.
 4. Suresh Mishra, Son of Vyash Mishra.
 5. Sadique Mian (since dead), Son of Jiuth Mian.
 6. Jagarnath Rajwar, Son of Sheo Dhari Rajwar.
- All residents of Village Aakashi, P.S. Agrer (Sasaram), P.O. Mokar, District Rohtas.

.... Appellants

Versus

The State of Bihar

.... Respondent

=====

Appearance :

For the Appellants	:	Shri Om Prakash Pandey, Advocate Shri Ashok Kumar Pandey, Advocate Shri Abu Haidar, Advocate Smt. Jahan Ara, Advocate
For the State	:	Susri Shashi Bala Varma, Advocate

=====

CORAM: HONOURABLE SHRI JUSTICE DHARNIDHAR JHA
and
HONOURABLE SHRI JUSTICE GOPAL PRASAD

ORAL JUDGMENT

(Per: HONOURABLE SHRI JUSTICE DHARNIDHAR JHA)

Date: 14-08-2015

Seven accused persons were put on trial by the learned 7th Additional Sessions Judge, Rohtas at Sasaram after being charged with committing offence under Section 302/149 of the Indian Penal Code. Out of those seven, the trial of Jafir Mian was separated on account of his absence. Three accused persons including appellants Md. Hadis and Kapil Ahir (Yadav) were distinctly charged under Section 27 of the Arms Act while four out of the seven, namely, Jagarnath Rajwar, Sadique Mian, Munir



Mian and Suresh Mishra were distinctly charged under Section 147 of the Indian Penal Code. The judgment in Sessions Trial No. 168 of 1980/119 of 1991 was delivered by the learned 7th Additional Sessions Judge, Rohtas at Sasaram on the 30th of November, 1992 and the six appellants before us were held guilty of committing offence under Section 302/149 of the Indian Penal Code and after being heard under Section 235 Cr.P.C., each of them was directed to suffer rigorous imprisonment for life. Two of the six appellants, namely, Md. Hadis and Kapil Yadav had also been held guilty of committing offence under Section 27 of the Arms Act and they had been directed to suffer rigorous imprisonment for two years. The sentences imposed upon Md. Hadis and Kapil Yadav were directed to run concurrently. The six convicted accused filed the present appeal to challenge the judgment of conviction and order of sentence.

2. During the pendency of the appeal, appellant Munir Mian and Sadique Mian died and on the basis of the report submitted after holding enquiry by Superintendent of Police, Rohtas at Sasaram, the appeal as on their behalf was ordered to abate as regards the substantive sentence of imprisonment awarded to each of them.

3. As per the *fardbeyan* (Ext.3), PW3, namely, Noor

Mohammad Ansari he along with Islam Mian, the deceased, and nephews of the informant Idris Mian, Iliyas Mian besides his son Jahangir Mian who were aged ten years, seven years and six years respectively was returning after visiting a *mela* at Mokar. When they had reached at a point one kilometer east of the Mokar bridge and were treading on the embankment of *Veda* canal, he found that appellants Jagarnath Rajwar and Sadique Mian (since dead) were sitting there and appellant Jagarnath Rajwar requested deceased Islam Mian to give lime to appellant Jagarnath Rajwar and in the mean while Kalam Mian armed with a *bhala*, Hadis Mian carrying a gun, Jafir Mian (not on trial) carrying a small pistol, Kapil Ahir armed with a small pistol, Manir Mian carrying a *lathi* along with Suresh Mishra was also carrying a *lathi* emerged from the shrubs of some plants from the north. It was stated that appellant Suresh Mishra had given a blow with *lathi* on the head of deceased Islam Mian who jumped into the canal, but the accused persons chased him and caught him and thereafter brought him outside the canal and took him into the same shrubs. It was stated that appellant Suresh Mishra and Hadis Mian ordered to kill the deceased upon which accused Kalam Mian (who died during trial) gave a *bhala* blow to the deceased as a result of which he fell down. The accused persons ran away towards south firing shots.

It was stated by the informant PW3 that the occurrence was witnessed by Hafiz Mian (PW4) and Alim Mian (not examined). It was further stated by the informant that the reason for commission of the murder of Islam Mian was that accused Kalam Mian was inimical towards the deceased.

The informant stated in his fardbeyan that after the occurrence, he went to his home at village Aakashi and from there he went to Agrer out post but no officer was present there and by the time he had reached there, it was dark, hence he could not come to the police station for lodging the report.

4. As may appear from the evidence of PW6 the Investigating Officer of the case S.I. Bishwanath Lal who was the Officer-in-Charge of Sasaram police station that he received a telephonic information about the incident and he proceeded from his police station for village Aakashi on to the canal. He met Noor Mohammad Ansari the informant of the case there who gave his statement to him which was reduced into writing by PW6. He read the report over to the informant who, accepting the same correctly recorded, signed it. The *fardbeyan* was marked Ext.3. PW6 stated that he sent the statement to the police station for lodging the First Information Report and on that basis the First Information Report was drawn up. The formal First Information Report was marked



Ext.4 in the case. He thereafter, inspected the place of occurrence and found the dead body and held inquest upon it after preparing the inquest report Ext.5. He sent the dead body for post-mortem examination to Sasaram hospital and then inspected the place of occurrence which was the southern embankment of *Veda* canal which was fifty yards in width. Twenty five yards south of the water level of the canal was situated the wildly grown shrubs and he found the dead body lying amidst it. It was a densely grown plant of a particular variety and he found copious blood fallen near the dead body as also on soil and over the plants which had grown there. He had found a pair of raw leather shoes lying there. PW6 stated that it was a lonely place and he seized the blood stained earth and plants as also the pair of raw leather shoes and prepared seizure list (Ext.6). Pair of shoes was also produced before the court and those were marked material Ext.I, besides producing the plants over which the blood was found which were marked material Ext.II. The Investigating Officer searched for the accused persons and recorded the statements on 15.01.1980 but his attempt to record the statement of Iliyas and Jahangir had failed. PW6 concluded the investigation on 16.05.1980 and had sent up the accused persons for their trial.

5. The defence of the accused persons was of false

implication by belatedly and collusively fabricating the report.

6. Out of the six witnesses examined by the prosecution during the trial of the appellants, Idris Ansari (PW1), Alimuddin Ansari (PW2), PW3 Noor Mohammad Ansari (the informant of the case) and Hafiz Ansari (PW4) deposed as eye witnesses to the occurrence. Dr. Ganesh Prasad (PW5) had held post-mortem examination on the dead body of the deceased Islam Mian and had issued the post-mortem examination report Ext.2. The defence also examined one witness.

7. Shri Om Prakash Pandey the learned counsel appearing on behalf of the appellants took us through the evidence of the witnesses and submitted that right hand corner of the First Information Report indicates as if the copy of the document had been received in the office of the Chief Judicial Magistrate, Sasaram on 24.04.1980, i.e., after ten days of the incident. It was contended that there is no explanation given by the prosecution as to why the report was dispatched as belatedly as indicated by the document itself. Though the column in respect of the date of dispatch of the copy of the report to the nearest Magistrate from the police station indicates that it had been dispatched by a special messenger. It was further contended that Alimuddin Ansari (PW2) was a witness to the seizure of blood stained earth and the pair of



shoes besides the plants which were also containing blood marks, but it has been stated by the witness PW2 that once he had gone back to his house after the incident, he did not report on 14.01.1980 at the place of occurrence and this indicates the other aspect of fabrication of evidence by the prosecution. Shri Pandey was arguing that if PW3 had visited the Agrer out post even if there was no officer, he does not say that there was none present there and it does not appear acceptable that why he did not file the report as well there. On these submissions, Shri Pandey was submitting that the whole prosecution case was shrouded in mystery and, as such, the appellants deserve to be acquitted.

8. Susri Shashi Bala Verma the learned Additional Public Prosecutor was contesting the submissions strenuously. She was drawing our attention to the first order passed by the Chief Judicial Magistrate, Sasaram in token of receiving the copy of the First Information Report and had submitted that it appears that the order was interpolated to ante-date it so as to cover up the omission and commission of any Clerk, who could have received the copy and who could have failed in putting the same before the Chief Judicial Magistrate. Susri Verma was submitting, as such, that the record itself explains away the submission of her counter part on the belated dispatch and receipt of the copy of the First



Information Report and further submitted that the element of collusive fabrication of the document injected into the argument by the learned counsel for the appellants appears misplaced. It was contended by Susri Verma that the evidence of witnesses was consistent that it was accused Kalam Mian who had given a blow with *bhala* after the deceased had been captured in the canal by the accused persons and had further been taken into the bush or shrubs of a particular plant which had wildy grown there. The witnesses were also consistent on the other parts of the prosecution story and the manner of occurrence was fully corroborated by the evidence of Dr. Ganesh Prasad (PW5). Susri Verma submitted that the appeal appears of no merit and the same is fit to be dismissed.

9. Out of the four witnesses who were examined by the prosecution, what appears to us is that Idris Ansari (PW1) was aged about twelve years on the day he was deposing in court and he could be somewhere around eleven years or just above eleven years on the day of occurrence. Alimuddin Ansari (PW2) was aged about twenty eight years on the date of occurrence and PW3 the informant was quite a grown up man of forty five years. Hafiz Ansari (PW4) was also a grown up man of over thirty five years on the day of occurrence. A child witness PW1 was examined by the court below after taking the precaution of testing the maturity of



the witness as regards understanding the implications of the questions which were likely to be put to him and the court recorded that it was satisfied that the witness was quite matured to understand the implications of the question and was competent to depose by rationally answering the questions to be put to him. The evidence of PW1 and that of the other witnesses, like, Alimuddin Ansari (PW2) as also that of Hafiz Ansari (PW4) support the evidence of Noor Mohammad Ansari (PW3) and the evidence of all the four witnesses in turn go to support the basic prosecution story which is contained in Ext.3, the *fardbeyan*. The witnesses had stated that while they were returning from Mokar *mela* and when they had reached one kilometer east of Mokar bridge, appellant Jagarnath Rajwar had requested the deceased to give him some lime and the deceased stopped there to oblige the appellant Jagarnath Rajwar when all appellants emerged from the wildly grown shrubs of a particular plant and appellants Suresh Mishra is said to have given a *lathi* blow on the head of the deceased Islam Mian as a result of which he jumped into the canal. The accused persons also followed him by jumping or entering into the canal to capture him and then to drag him out of the canal to be dragged further to the wildly grown shrub of a particular plant where at the orders of appellant Suresh Mishra and Hadis Mian, Kalam Mian,



who was subsequently murdered, gave a *bhala* blow on the chest of the deceased and as appears from the evidence of PW3 in paragraph-1 it was a massive blow given by accused Kalam Mian as he had stepped back to come forward to pierce the *bhala*. During cross-examination of these witnesses it has consistently been stated by them that as soon as the request was made by appellant Jagarnath Rajwar to the deceased for giving lime to him, he had stopped there for a moment on to the bank of the canal and just thereafter the accused persons had emerged from the wildly grown plants and the first blow was wielded by appellant Suresh Mishra with a *lathi*. It is true that PW1 had stated that the deceased was his uncle which appears also not challenged by the prosecution as the very *fardbeyan* states that the informant and deceased were coming back from *mela* along with the little children who were the nephews of the informant. There is some admission by the informant that there was some enmity between accused Kalam Mian and the deceased but why should these witnesses come forward to depose against these accused persons could not be brought on record inasmuch as the accused persons belonged to different castes and communities. Some accused persons belonged to Mohammedan community while Suresh Mishra belonged to a caste different from Jagarnath Rajwar both of



whom were belonging to the Hindu community along with appellant Kapil Yadav whose caste was different from both Suresh Mishra and Jagarnath Rajwar. The action which was perpetrated by the accused persons right from the time they had emerged from the wildly grown bush to enter into the canal to catch the deceased and then to bring him out to be taken into the shrubs, the evidence of the witnesses does indicate that there was an unity of purpose in their minds and they were being moved by that particular purpose which had brought them together to participate in the commission of the offence. No real reason has been shown from the evidence of the witnesses as to why they could be appearing to depose against Kapil Yadav, Suresh Mishra or Jagarnath Rajwar who did not have any history of being inimically disposed towards the deceased Islam Mian or the deceased being inimical towards them. We, as such, have no reason to discard the evidence of the witnesses who appeared present there at the scene of occurrence and their competence in being the eye witnesses could not be doubted.

10. The manner of occurrence of giving a single *bhala* blow by accused Kalam Mian on to the left side of the chest as appears from the evidence of PW3 and others and as we have just noted for dealing the blow the said accused Kalam Mian had



stepped back three times to come forward again so as to gaining a momentum to give the blow. The evidence of PW5 Dr. Ganesh Prasad indicates that he had found a sharp cut injury vertically on the left side of chest measuring 2¼"x1/2". The blow had cut the lower portion of the fifth rib and had punctured into the wall of the chest. A bruise with abrasion on left side of head 2"x1" with another bruise with abrasion on left side of chest 1½"x1" was also found by PW5. On opening the chest cavity, PW5 had found that the left lung was punctured and the margin thereof was sharply cut. The lower part of the left ventricle was also sharply cut in its small portion as a result of which the chest cavity was filled with blood. In the opinion of PW5, deceased Islam Mian had died due to shock and haemorrhage caused by injury no.1 which was caused by sharp pointed weapon, while injuries no.2 and 3 were caused by hard and blunt substance. During cross-examination by the defence, the witness had stated as may appear from paragraph-6 of his evidence that the bruises which were found by him on the dead body could also have resulted on account of rubbing of the body of the deceased against a rough surface. However, what we read into the evidence of PW5 is that the bruise on head of the dead body 2"x1" in size might also have been caused by the first blow dealt by appellant Suresh Mishra with *lathi*. Thus, what appears from the



evidence of PW5 is that the injury which was fatal had indeed been caused by some sharp pointed weapon and that fits in completely with the allegation that the deceased had been given a blow with *bhala* by accused Kalam Mian. The two bruises which were also recorded by the doctor during post-mortem examination also somehow or the other support the manner of occurrence as the prosecution story and evidence was that after the deceased had jumped into the canal the accused persons had also followed him therein to catch him and to drag him to be taken to be brought firstly to the embankment and the canal and thereafter to be taken into the wildy grown plants. The dragging which appears from the evidence of the deceased by the accused persons might have caused the bruises one of which on head could be an exception to the act of dragging the same appear to us resulting from the *lathi* blow given by appellant Suresh Mishra.

11. Two submissions of Shri Pandey require consideration. The first submission was that it was a belated dispatch of the copy of the report from the police station and the same was received by the Chief Judicial Magistrate on 24.04.1980. It was contended that there was no explanation offered by the prosecution as to why the copy of the document was dispatched as belatedly as appears from the record of the document. We had



looked to the copy of the document available on record and we did find that the submission of Shri Pandey was truly borne out from the fact that the Chief Judicial Magistrate had perused the document after it was put up before him on 24.04.1980. But in order to satisfy ourselves as to how it could be as belated when the law requires the dispatch of the document forthwith as per Section 157 Cr.P.C., we looked into the first order sheet regarding the receipt of the copy of the First Information Report by the Magistrate. What we could find was that it could not be a certainty that the document must have reached the Chief Judicial Magistrate on 24.04.1980 rather it had reached the court or in the office of the Chief Judicial Magistrate sometimes ahead of 24.04.1980 because the first order appears manipulated to convert the number 15 into no. 24. It is a definite interpolation appears also from the fact that the first date is in ordinary Indian Hindi arithmetical digit whereas the later part of the order has been written as per English calendar digit. If the two orders were drawn by the same man on the same date, we do not see any reason as to why the same date be indicated in two styles of indicating the dates. That part of the record also lends credence to our inference that probably the clerk of the court who had received the document along with the requisition filed by the Investigating Officer of the case had kept it



wrapped into the office file and when he could find it out on 24.04.1980 when the requisition submitted by the Investigating Officer for issuance of process like, non-bailable warrant of arrest and those under Sections 82 and 83 Cr.P.C. was received, then Clerk had searched the First Information Report and had put up the same before the Chief Judicial Magistrate, when the learned Chief Judicial Magistrate refused to acknowledge the receipt of the document. In order to bringing conformity with the date on which the Chief Judicial Magistrate had perused the document the *Babu* of the court had interpolated the date by ante-dating it. The other reason which we find is that the First Information Report was drawn up on 14.01.1980 and there is no reason for us to accept that only in ten days time the police will be praying for requisition of processes under Sections 82 and 83 Cr.P.C. This also supports the view that the *Babu* had put up the copy of the document quite belatedly in spite of receiving the First Information Report and probably when the Investigating Officer had approached him with the other requisition for warrant of arrest etc. he, having received the copy of the First Information Report and having not put it up before the Chief Judicial Magistrate, as already noted by us, in order to cover up his lapses he had interpolated the date by writing over the date, which could be originally either 14 or 15 to make it

24. Thus, what we find is that the submission of Shri Pandey does not appear borne out from the record.

The other reason to reject the submission of Shri Pandey on belated receipt of the report by the Chief Judicial Magistrate appears from the post-mortem examination report as per which the dead body had been dispatched from the place of occurrence on 14.01.1980 at 23.00 P.M. that's, 11.00 P.M. and the same was received in Sasaram hospital on 15.01.1980 at 9.45 A.M. The evidence of the Investigating Officer PW6 in paragraph-11 that the dead body had been dispatched from the place of occurrence by a bullock cart. Naturally, it had reached Sasaram on 15.01.1980 at 9.45 A.M. The post-mortem report bears the police case number, which completely rules out the fabrication of the statement and the First Information Report.

12. The other submission of Shri Pandey was that the Investigating Officer had reached the place of occurrence by 07.30 P.M. and had recorded the statement of the informant and it appears from the evidence of PW6 that all witnesses along with other persons were already assembled there. The contention of Shri Pandey that if the witnesses were already there why did not they come forward to give their statements to the police and why did they chose to answer the queries from the police on



15.01.1980. We find that the occurrence had taken place at about 3.00 P.M. and as appears from the evidence of PW3 the informant of the case just after the occurrence he had gone to the house of the *Choukidar* to take him along with him to Agrer out post. He has further stated that when he had reached the Agrer out post, he found no police officer present there and by that time darkness had dawned all around and, as such, he came back to his village and could not go to Sasaram out of fear. It was contended by Shri Pandey that there might not be the officer present there but there is no evidence that none was present there and, as such, it appears that the informant was evading to give a report to the police at the earliest. We find from perusal of the evidence of the witness PW3 that there has not been any challenge to his evidence that he had gone to Agrer out post and there was no police officer present there.

13. As regards the non filing of the report at the police station, we may refer to the provision of Section 154 Cr.P.C. which requires that a report could be filed only with an Officer-in-Charge of the police station. The Officer-in-Charge of the police station has been defined by Section 2 (o) Cr.P.C. which reads that an "officer in charge of a police station" includes, when the officer in charge of the police station is absent from the station-house or



unable from illness or other cause to perform his duties, the police officer present at the station-house who is next in rank to such officer and is above the rank of constable or, when, the State Government so directs, any other police officer so present. Thus, what appears from the above two provisions is that a Constable could not be the Officer-in-Charge of the police station and even if assuming that a Constable was present then also, he was not competent to receive an information as per the provisions of Section 154 Cr.P.C. No officer was present, this is the evidence but this is also not the evidence that there was any other personnel posted there at the Agrer out post and the informant had met such an employee of the police department who had been posted there. The *Choukidar* had accompanied him and we could hardly be required to point out that if a Constable could not be the Officer-in-Charge of the police station, a *Choukidar* could never be treated in that line of hierarchy of the police station. The evidence of PW3 was very clear that the darkness had dawned all around and he came back to his village and could not dare go to Sasaram police station out of fear. The evidence of PW6 also states that he had received some information about the informant telephonically and he had left his police station and had reached the place of occurrence where he had found many persons present which



included the informant as well. The *fardbeyan* of the informant was recorded at 7.30 P.M. and the copy of the same was sent to Sasaram police station on the basis of which the First Information Report was drawn up at 11.00 P.M. The investigation had been taken by the Investigating Officer and in that connection he had searched the dead body and held the inquest upon it and thereafter had inspected the place of occurrence when he had found the blood copiously fallen at the place where the dead body was lying besides the same splattered over wildly grown plants. He found the pair of raw leather shoes lying there and he had prepared the documents in connection with all steps of investigation which had required preparation of documents too in those connections. If he had not recorded the statement of witnesses, we do not see any unusualness in it because the Investigating Officer does not say that he had searched for any particular witness or had attempted to question a person who was acquainted with the facts and circumstances of the case and he had declined or evaded to be questioned by him. The very evidence of PW6 in paragraph-4 indicates that he came to village Akashi on 15.01.1980 and he searched for the accused persons and the witnesses. On perusal of the evidence of PW6 the Investigating Officer in paragraphs 4 and 11 we cannot read many things beyond that and to hold that there

was a belated recording of the statements of witnesses under Section 161 rather we find that the witnesses were very prompt in giving their statements as soon as they were searched by the Investigating Officer in their village.

14. After having apprised the evidence of the witnesses, we find that the prosecution has indeed succeeded in bringing the charge home against the accused and they had been rightly convicted and sentenced properly. In the result, we do not find any merit in the appeal and the same is dismissed. The surviving appellants, namely, Kapil Yadav, Md. Hadis, Suresh Mishra and Jagarnath Rajwar are on bail. Their bonds are hereby cancelled. Let them surrender and serve out the sentences passed upon each of them.

(Dharnidhar Jha, J.)

(Gopal Prasad, J.)

Sanjay/N.A.F.R.

U		T	
---	--	---	--