

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.847 of 2010

Arising out of P.S.Case No. 20 Year 2006 Thana-Parasa District- SARAN

1. Dharmendra Rai @ Dhobiya son of Butai Rai

2. Sabir Miyan@ Khan, son of Jurman Miyan

Both resident of village-Chandpura, P.S. Parasa, District-Saran.

.... Appellants

Versus

The State of Bihar

.... Respondent

Appearance :

For the Appellant/s : Shri Madhav Prasad Yadav

For the Respondent/s : Sushri Shashi Bala Verma

CORAM: HONOURABLE SHRI JUSTICE DHARNIDHAR JHA

and

HONOURABLE SHRI JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

(Per: HONOURABLE SHRI JUSTICE DHARNIDHAR JHA)

Date: 10-07-2015

The two appellants Dharmendra Rai @ Dhobiya and Sabir Miyan @ Khan were tried by the learned 3rd Additional Sessions Judge, Saran at Chapra after being charged with commission of offence under Section 302/34 of the Indian Penal Code and by judgment dated 06.04.2010 they were held guilty of committing that offence. After hearing the appellants on sentence on the same day, the learned Judge directed each of them to suffer rigorous imprisonment for life as also to pay a fine of Rs.20,000/-, else to suffer rigorous imprisonment for six months. The learned trial Judge directed that in case of realization of the fine from the appellants, the whole amount be defrayed as compensation to the nearest of kins of the two

deceased, namely, Yugal Singh and Mukesh Singh. The appellants have jointly challenged the judgment of conviction and order of sentence.

2. Nawlesh Kumar Singh (P.W.4) was the son of deceased Yugal Singh and the brother of other deceased Mukesh Singh. As per his story, they were sitting at their cattle shed and were singing Holi. It was the day of Holi when P.W.10 Ajmeri Khatoon came there to request the deceased Yugal Singh to come along to rescue her husband who was being beaten up by appellant Dharmendra Rai @ Dhobiya. Yugal Singh rushed to the place where Amiruddin, the husband of P.W.10 Ajmeri Khatoon was being assaulted and requested appellant Dharmendra Rai to refrain from assaulting Amiruddin as it was the day of Holi. No sooner the deceased had uttered those words than the appellant Dharmendra Rai @ Dhobiya is said to have pulled out a pistol to fire a shot. Deceased Yugal Singh fell onto the ground. Seeing his father being injured, the other deceased Mukesh Singh also rushed to the scene of occurrence and it was appellant Sabir Miyan @ Khan who fired a shot killing him.

3. The informant stated that with the help of the villagers who had assembled there, he picked up the two injured persons to bring them to Parsa hospital where the doctor declared them brought

dead.

4. The fardbeyan of P.W.4 was recorded in Parsa hospital and the investigating officer, who was not examined, held inquest upon the dead bodies of Yugal Singh and Mukesh Singh. The two inquest reports have been marked as Exts.-3/b and 3/C. It further appears that the dead bodies were sent for postmortem examination and P.W.9 Dr. Shambhu Nath had held the autopsy on the two dead bodies and had prepared the inquest reports Ext.-4 and 4/A. After completing the investigation, the appellants were sent up for trial.

5. Ten witnesses were examined by the prosecution, out of whom, P.W. 1 Tarkeshwar Prasad Singh and P.W.2 Surendra Singh did not appear to be eye witnesses to the occurrence. P.W.1 in paragraph-10 of his evidence had stated that when he had arrived at the scene of occurrence which was a field in which *moong* crop had grown up, he found both deceased Yugal Singh and Mukesh Singh lying injured and by that time ten more villagers had assembled there who consisted of P.W.4 Nawlesh Kumar Singh, P.W.6 Neeraj Kumar Singh, P.W.7 Prabhu Singh and P.W.8 Ratnesh Singh. P.W.1 could not talk to the deceased as both of them were unconscious. Thus, after having considered the evidence of P.W.1 in cross-examination in paragraph-10, we find that he had not seen the real part of the occurrence. Similar is the case with P.W.2 Tarkeshwar Prasad Singh



who had also stated in paragraph-11 of his evidence that he and P.W.4 Nawlesh Kumar Singh had gone to the place of occurrence from the place they were singing *Holi* and when they arrived at the scene of occurrence, the witness found the two deceased Yugal Singh and Mukesh Singh lying injured and they were still conscious. Thus, what appears from the evidence of P.W.2 in paragraph-11 is that it could be doubtful that P.W.2 could also have seen the occurrence. P.W.3 Bhola Miyan had supported the story but he was not cross-examined and a petition filed for recalling the witness was dismissed by the court below against which order, a Miscellaneous Petition was preferred by the prosecution before this Court during the pendency of which, the trial was disposed of. We think it better to exclude the evidence of P.W.3 from our consideration as his non-examination appears rendering his evidence inadmissible.

P.W.4 Nawlesh Kumar Singh, the informant of the case has stuck to his guns by stating in his evidence that P.W.10 Ajmeri Khatoon had come to his cattle shed and had pointed out to his father deceased Yugal Singh that the two appellants were assaulting her husband Amiruddin. The deceased Yugal Singh rushed raising alarms towards the place of occurrence and saw that the two appellants were assaulting Amiruddin. They were armed with country- made guns and the deceased Yugal Singh attempted to rescue Amiruddin when



appellant Dharmendra Rai @ Dhobiya fired a shot from his country-made gun into the belly of deceased Yugal Singh who fell down on the ground. His elder brother Mukesh Singh caught hold of the appellant Dharmendra Rai @ Dhobiya when the other appellant Sabir Miyan @ Khan fired a shot into his chest from a very close range as a result of which deceased Mukesh Singh also slumped onto the ground. The two appellants, thereafter, ran away from the scene of occurrence firing blank into air and the informant with the help of his villagers brought the two injured to the hospital where they were declared brought dead.

6. P.W.1 had stated that the reason for the occurrence was that appellant Dharmendra Rai @ Dhobiya had demanded a motorcycle from Amiruddin, who ran a cycle shop, which request was refused by Amiruddin and that had turned into the incident of assaulting Amiruddin and the intervention by his father was the genesis of the occurrence. Thus, what appears is that there was a solitary support to the prosecution case and that was coming from the informant himself. So far as the evidence of P.Ws.1 and 2 are concerned, we have already noted down that they do not appear eye witnesses to the occurrence.

7. Out of the remaining witnesses, P.W.6 Niraj Kumar Singh was a witness to inquest proceedings held upon the dead bodies

of both the deceased.

8. P.W.7 Prabhu Singh had stated that the two deceased Yugal Singh and his son Mukesh Singh had been murdered on 15.03.2006 on the day of *Holi* at about 7 P.M. and further that at that time, people were singing *Holi* when there was fight amongst the family members of Amiruddin. Deceased Yugal Singh intervened to disengage the persons who were fighting and came back to his cattle shed where his son Mukesh Singh was killed first and deceased Yugal Singh was murdered subsequently. In paragraph-3 of his evidence of P.W.7 has stated that two unknown persons had committed the murder of the two deceased and they were outsiders and unknown criminals who had been set up hire by the said Amiruddin and at that time Amiruddin was also present there. P.W.7 stated that after the two deceased were injured, he and others shifted them to the hospital where the document in respect of the dead bodies, i.e., the inquest report were prepared and he had signed them.

The evidence of P.W.7 run contrary to that of P.W.4, the informant. P.W.7 Prabhu Singh was produced by the prosecution and in spite of the witness having made statement contrary to the very prosecution case, we do not find him being declared hostile on any part of the evidence or having been challenged as not having stated the truth. We find that the prosecution led the above evidence itself

and the witness was cross-examined by the defence.

9. So far as the other witnesses are concerned, P.W.8 Ratnesh Singh was again a witness to inquest and P.W.5 Dr. Arun Kumar had examined P.W.10 Ajmeri Khatoon and P.W.3 Bhola Miyan for injuries which was found on their persons. P.W.9 Dr. Shambhu Nath had held autopsy on the two dead bodies.

10. P.W.10 Ajmeri Khatoon was the most important witness as regards the prosecution story and that part of it which relates to the genesis of the occurrence. While being examined in Court, P.W.10 Ajmeri Khatoon did not support the prosecution story that her husband was ever assaulted by appellant Dharmendra Rai @ Dhobiya or that she had requested Yugal Singh to intervene to save her husband. She, rather, stated that deceased Yugal Singh and his son Mukesh Singh were murdered by terrorists who had swooped upon them to kill them. Thus also, what we find is that the prosecution story as regards Ajmeri Khatoon having come to deceased Yugal Singh to request him to intervene so as to saving her husband Amiruddin from being further assaulted by appellant Dharmendra Rai @ Dhobiya is not supported by her. It is true that P.W.4 has supported his own story but the prosecution evidence of Ajmeri Khatoon does not support his case that she had never come to deceased Yugal Singh to request him to intervene so as to saving her husband who was assaulted by

appellant Dharmendra Rai @ Dhobiya. Her evidence was also ruling out the presence of appellant Dharmendra Rai @ Dhobiya and the manner of occurrence was something different than what was alleged by the prosecution as appears from the evidence of PW-10 Ajmeri Khatoon. The two conflicting sets of evidence one coming from P.W.4 the informant and the other from P.W.7 and P.W.10 creates a serious doubt in our minds as regards the veracity of the prosecution story. It appears dangerously unsafe for us to hold the judgment of conviction and order of sentence in the light of the disproof of the charges due to two conflicting sets of evidence.

11. In the result, the appeal succeeds and the same is allowed by setting aside the judgment of conviction and order of sentence. The two appellants are acquitted of the charge they had been held guilty of. The two appellants are in custody. Let them be released forthwith if not wanted in any other case.

(Dharnidhar Jha, J.)

(Ahsanuddin Amanullah, J.)

B.Kr./-Saif

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