

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.198 of 1993

Arising Out of PS.Case No. -42 Year- 1990 Thana -Saraiya District- MUZAFFARPUR

1. Raja Singh, son of Ram Swarath Singh, resident of Village Dhumnagar, P.S. Motipur, District Muzaffarpur
2. Uma Singh, son of Yogendra Singh, resident of Village Bankat, P.S. Baruraj, District Muzaffarpur

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

With

Criminal Appeal (DB) No. 222 of 1993

Arising Out of PS.Case No. -42 Year- 1990 Thana -Saraiya District- MUZAFFARPUR

1. Shailendra Singh, son of Ramanuj Singh, resident of Village Jamalpur, P.S. Kathaiya, District Muzaffarpur
2. Bhupendra Singh, son of Ram Sewak Singh, resident of Village Jamalpur, P.S. Kathaiya, District Muzaffarpur

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

Appearance :

For the Appellants : Mr. Sharvan Kumar, Sr. Advocate
Mr. Dinesh Maharaj, Advocate
Mr. Satish Kumar Singh, Advocate
For the Respondents : Mr. A.K. Sinha, APP

CORAM: HONOURABLE MR. JUSTICE V.N. SINHA

and

HONOURABLE MR. JUSTICE JITENDRA MOHAN SHARMA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE V.N. SINHA)

Date: 28-07-2015

Heard leaned counsel for the parties.

2. Both these appeals arise out of judgment/

order dated 24.03.1993, passed by 4th Additional District and



Sessions Judge, Muzaffarpur, in Sessions Trial No. 214 of 1991 whereunder four appellants have been convicted for the offences under Sections 302/ 149, 307/149 of the Penal Code and sentenced to suffer rigorous imprisonment for life, seven years under both the counts. Appellants Raja Singh and Uma Singh have further been convicted for the offence under Section 365/511/34 of the Penal Code and sentenced to suffer rigorous imprisonment for three years. The sentences, however, have been directed to run concurrently.

3. Prosecution case, as set out in the fardbeyan of informant Dhananjay Kumar Rai (P.W. 22), recorded by Sub-Inspector Narbadeshwar Mishra, Incharge Jaitpur O.P. (P.W. 25) on 28.11.1990 at 6.00 P.M., is that on the same day around 4.00 P.M. informant along with his elder brother Ashok Kumar Rai (P.W. 12) was at his cattle-shed reading newspaper. All of a sudden from the eastern side notorious criminal Shekhar Singh, Raja Singh and one unknown came there on a red colour bullet motorcycle. Unknown person was of dark complexion but well built. Raja Singh was armed with gun and cartridge belt. Shekhar Singh asked the elder brother of the informant (P.W. 12) about his identity. On disclosure of identity by P.W. 12 Raja Singh asked/ dragged him towards the motorcycle. Meanwhile, on alarm being raised Kameshwar Rai (P.W. 10) cousin of informant came running and protested. Raja



Singh thereafter not only chased Kameshwar (P.W. 10) but also shot at him, Kameshwar somehow escaped. Informant and his brother (P.W. 12) also managed to escape towards their house. The three accused persons chased the informant, his elder brother and P.W. 10 to their house and resorted to firing. Informant also returned fire with his licensed gun from the roof of his house causing gun shot injury to Shekhar Singh, who became injured and fell down. No sooner Shekhar Singh fell down his two accomplice escaped on the motorcycle. Informant came down from the roof and found injured Shekhar Singh dead. After about half an our 10-12 miscreants came to the village in a jeep and two motorcycle armed with 7-8 guns. After entering the village miscreants resorted to firing to frighten the villagers. Amongst the miscreants informant identified Nawal Singh, Uma Shankar Kuer, Sanjay Singh (absconders), Accused No. 3 Bhupendra Singh, Accused No. 2 Shailendra Singh. Miscreants shot at the frightened villagers, informant and others having become fearful went towards north of the village along with their family members. After 15 minutes of departure of the miscreants informant came towards his house and found in front of his house near the house of Chawkidar Ram Krit Rai situate opposite his house, two ladies and a child in injured condition. The injured told the informant that the miscreants after

entering their house shot them causing injury. The injured also informed the informant that the miscreants also entered the house of the informant searching for his family members and while returning miscreants carried the dead body of Shekhar Singh in the jeep. Informant further stated in the fardbeyan that hearing alarm from the northern side of the village he proceeded in that direction, found by the side of road dead body of Kail Rai aged 70 years, Banwari Sah aged 65 years and Mainul Haque aged 75 years. The family members of the three deceased present near the dead body informed the informant that the miscreants had come on the jeep, motorcycle and killed the three with fire-arms. Family members of the three deceased, however, could not notice registration number of either the jeep or the motorcycle. In the last paragraph of the fardbeyan informant claimed that Accused No. 4 Raja Singh, Nawal Singh, Uma Shankar Kuer, Sanjay Singh (absconders), Accused No. 3 Bhupendra Singh, Accused No. 2 Shailendra Singh and 6-7 unknown, whom he can identify after he is made to see their face, committed the occurrence after Shekhar Singh failed in his attempt to kidnap his elder brother Ashok Kumar Rai (P.W. 12) by resorting to firing. In the same paragraph informant further asserted that he also fired from his licensed gun causing death of Shekhar Singh. After half an hour Nawal Singh, Uma Shankar Kuer, Sanjay



Singh and others came on a jeep, motorcycle armed with fire-arms, entered the village and resorted to firing. Fardbeyan has been signed by the informant and Rajeshwar Rai as attesting witness. Scribe of the fardbeyan, Incharge Jaitpur O.P., having scribed the fardbeyan took up its investigation, forwarded the same to Officer-in-Charge, Saraiya Police Station for registration of the case, who in the light of the fardbeyan while registering Saraiya P.S. Case No. 42/90 dated 28.11.1990 also endorsed that Incharge, Jaitpur O.P. Sri Narbadeshwar Mishra shall investigate the case. Investigating Officer having scribed, forwarded the fardbeyan proceeded to conduct inquest on the three dead bodies on the same day at 6.30, 7.00, 7.30 P.M. respectively in presence of Ram Sagar Rai, Kameshwar Rai, Abdul Karim, Md. Naeem and Kameshwar Rai, Bachcha Prasad Rai respectively. Perusal of the three inquest report(s) indicate that the three deceased were killed by inflicting fire-arm injury. Having conducted inquest proceeding Investigating Officer forwarded the three dead bodies to Sadar Hospital, Muzaffarpur for post mortem. The dead bodies were received in Sadar Hospital, Muzaffarpur on 29.11.1990 at 11.20 A.M. and post mortem conducted at 11.45 A.M., 12.00 Noon and 1.00 P.M. respectively on the same day. Investigating Officer recorded the further statement of the informant, police statement of the father of



the informant and other villagers. In the light of the contents of the fardbeyan, further statement of the informant, police statement of the witnesses, inquest, post mortem report charge-sheet was submitted. In the light of the charge-sheet cognizance was taken and case was committed to the Court of Sessions. The Court of Sessions framed charges under order dated 31.07.1991 for the offences under Sections 302, 307, 364, 511 of the Penal Code and Section 27 of the Arms Act to which the accused persons pleaded not guilty and claimed to be tried.

4. In support of the prosecution case, prosecution examined as many as 25 witnesses. P.W. 22 Dhananjay Kumar is the informant of the case. P.W. 1 Bachcha Prasad Rai is the father of the informant. P.W. 12 Ashok Kumar Rai is the elder brother of the informant, who along with the informant was at the cattle-shed where first part of occurrence took place. P.W. 10 Kameshwar Rai is the cousin of the informant, who after hearing alarm also came to the cattle-shed and P.Ws. 22, 12, 10 were chased by the miscreants. P.Ws. 2, 3, 5, 17, 18 Birju Rai, Krishna Rai, Md. Mustakeem, Md. Ishaque, Abdul Jalil have become hostile. P.Ws. 7, 8, 14, 15, 20, 21, 24 Ram Ashish Rai, Jai Mangal Rai, Mahendra Rai, Abdul Hafeez, Shankar Rai, Md. Hasan, Dhaneshwari Devi have been tendered. P.Ws. 4, 9, 11 Ram Sagar



Rai, Bhagirath Rai, Rameshwar Rai are the eye-witnesses of the occurrence and have deposed about the assault resorted to by Sanjay Singh as the assailant of Banwari Sah and Nawal Singh as the assailant of Kail Rai. They have not attributed any overt act to these appellants. P.W. 6 Dr. Nawal Kishore Mishra examined the three injured. P.W. 13 Dr. Mumtaz Ahmad conducted post mortem on the dead body of the three deceased. P.W. 16 Abdul Kalam and P.W. 19 Bhupendra Narayan Singh are the witness of seizure. P.W. 23 Sumitra Devi is the injured and eye-witness of the occurrence but did not identify any of the assailants. P.W. 25 Narbadeshwar Mishra is the scribe, Investigating Officer of the case.

5. Defence also examined one witness i.e. D.W. 1 Gobardhan Paswan, who proved Exhibits A/1, B/1 the fardbeyan, formal First Information Report lodged by Binod Singh, brother of deceased Shekhar Singh asserting killing of Shekhar Singh by Dhanjay Kumar (P.W. 22).

6. Learned counsel for the appellants submitted that the occurrence took place in two parts. First part of the occurrence is said to have taken place at the cattle-shed of informant (P.W. 22) where on the date, time of occurrence while informant along with his elder brother(P.W. 12) was sitting, reading the newspaper, on a red colour bullet motorcycle Raja Singh,



Shekhar Singh and one unknown came, Shekhar Singh verified the identity of the elder brother of the informant (P.W. 12) and asked him to accompany them on the motorcycle, which was not only resisted but also alarm was raised. After hearing alarm cousin of the informant (P.W. 10) came to the place of occurrence. Informant and P.W. 10 somehow succeeded in securing release of P.W. 12 from the clutches of Raja Singh, Shekhar Singh and the unknown and managed to escape. The three miscreants chased the informant, P.Ws. 12, 10 into the village and resorted to firing at the house of the informant. Informant climbed his roof and returned fire from his licensed gun causing injury to Shekhar Singh, who died at the spot thereafter Raja Singh and the unknown escaped from the motorcycle. Informant came down from the roof and having found Shekhar Singh dead asked Chowkidar Maheshwari Rai to inform Jaitpur O.P. about the occurrence in which Shekhar Singh was killed by P.W. 22 in self defence. Chowkidar came to Jaitpur O.P. and narrated the fardbeyan, which was also scribed by Sri Narbadeshwar Mishra (P.W. 25), on the basis of which Saraiya P.S. Case No. 131/90 dated 28.11.1990 for the offence under Section 304 of the Penal Code was registered with instruction to Sri Mishra to investigate the case.

7. It is further submitted by learned counsel for



the appellants that after the Investigating Officer (P.W. 25) came to the place of occurrence to investigate Saraiya P.S. Case No. 131/90 he noticed in the village three dead bodies of Banwari Sah, Kail Rai and Mainul Haque. Having seen the three dead bodies Investigating Officer recorded the fardbeyan of informant (P.W. 22) in which he also accounted the manner in which Shekhar Singh was shot by him with his licensed gun. Informant further explained that after first part of occurrence Shekhar Singh was shot dead by him, the two miscreants i.e. Raja Singh and one unknown returned to their village and after half an hour again came with reinforcement along with Sanjay Singh, Nawal Singh, Uma Shankar Kuer (absconders) and others, resorted to the second part of the occurrence in which Banwari Sah, Kail Rai and Mainul Haque were killed. Informant and his family members, however, were saved as they managed to escape towards northern side of the village.

8. Learned counsel for the appellants next submitted that from the prosecution evidence it will appear that the assailants of the three deceased, namely, Banwari Sah, Kail Rai and Mainul Haque were Sanjay Singh and Nawal Singh. These appellants were only the members of the unlawful assembly and cannot be fastened with the charge of Section 302 of the Penal Code as no specific over act is asserted against them by any of the



witnesses. It is submitted that conviction of the appellants for the offence under Section 302/149 and other allied Sections of the Penal Code can also not be maintained as the prosecution has failed to investigate the version recorded by Binod Singh, brother of deceased Shekhar Singh, who was the first casualty in the occurrence, admittedly at the hands of the informant (P.W. 22). It is submitted that the Investigating Officer (P.W. 25) could not have accepted the plea of P.W. 22 that Shekhar Singh was shot by him from his roof top with his licensed gun. It is submitted that even the version recorded by informant that killing of Shekhar Singh was necessitated as he along with Raja Singh and one unknown chased him, P.Ws. 12, 10 from the cattle-shed, resorted to firing at the house, has not been established by any of the prosecution witnesses, much less by the Investigating Officer, as no sign of firing being resorted to by the accused persons at the house of the informant has been noticed by the Investigating Officer in course of investigation. The version of the informant that he along with P.Ws. 12, 10 was chased by Shekhar Singh, Raja Singh and one unknown and Shekhar Singh resorted to firing, informant (P.W. 22) climbed his roof and shot Shekhar Singh in self defence, has also not been confirmed from the objective materials found at the two place of occurrence, one in the cattle-shed and the other in front of the house

of informant (P.W. 22).



9. Learned counsel for the appellants further submitted that the prosecution story that Raja Singh and others came back after sometime and resorted to stray firing in the village killing three villagers, with whom they had no concern, is also indicative of the fact that the occurrence, as disclosed by the informant in the fardbeyan, did not take place. The occurrence perhaps took place in the manner different from the one noted in the fardbeyan recorded by informant (P.W. 22). In this connection, reliance is placed on the fardbeyan of Chowkidar (Exhibit-A) and the fardbeyan lodged by Binod Singh, brother of deceased Shekhar Singh (Exhibit-A/1) about killing of Shekhar Singh wherefrom it appears that the place of occurrence is also elsewhere. In the circumstances, we have no option but to acquit the four appellants of the charge under Sections 302/149, 307/149 of the Penal Code by granting them benefit of doubt as no overt act is found against them. Cr. Appeal (DB) No. 222 of 1993 is, accordingly, allowed.

10. So far conviction of appellants Raja Singh and Uma Singh for the offences under Sections 365/511/34 of the Penal Code is concerned, we are satisfied that the same does not require any interference, except in the quantum of sentence, as the period already undergone by them, may be as under-trial or convict

will suffice for the sentence of three years awarded to the two.

11. With the modification in conviction, sentence, Cr. Appeal (DB) No. 198 of 1993 is partly allowed. Appellants Shailendra Singh and Bhupendra Singh in Cr. Appeal (DB) No. 222 of 1993 are on bail, are discharged from the liability of their respective bail bonds.

(V.N. Sinha, J)

(Jitendra Mohan Sharma, J)

Rajesh/-

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