

IN THE HIGH COURT OF JUDICATURE AT PATNA

Govt. Appeal (DB) No.41 of 1993

Arising Out of PS.Case No. -139 Year- 1990 Thana -Mohania District- BHABHUA

The State of Bihar

.... Appellant/s

Versus

1. Jagdish Sah, son of Saryu Sah
2. Sakaldeep Sah, son of Saryu Sah
3. Kanhaiya Sah
4. Munna Sah
5. Mahendra Sah, 3 to 5 sons of Jagdish Sah
6. Saryu Sah
7. Baij Nath Sah, both sons of Lalmuni Sah, residents of village Dehuri, P.S. Jamaniya, District Gazipur (U.P.). At present Siya Pokhar, P.S. Mohaniya, District Bhabhua

.... Respondent/s

Appearance :

For the Appellant : Mr. A. K. Sinha, APP

For the Respondents : None

For the Informant : Mr. Ravi Shanker Sahay, Advocate
Mr. Ajay Nandan Sahay, Advocate

CORAM: HONOURABLE MR. JUSTICE V.N. SINHA

and

HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT

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

Date: 28-04-2015

State has preferred this appeal assailing the judgment dated 29.04.1993, passed by 1st Additional Sessions Judge, Bhabhua, in Sessions Trial No. 72/16 of 1991 whereunder seven accused persons, respondents herein, have been acquitted of the charge under Section 302/34 and other allied Sections of the Penal Code.

2. Prosecution case, as set out in the fardbeyan of Sabita Devi, daughter of Faudar Sah recorded by A. Kumar, Officer-in-Charge, Mohania Police Station on 29.10.1990 at 8.00 hours in her

house situate in village Siya Pokhar, is that in the previous night after taking her dinner she was sitting on a cot, her elder brother Tulshi Sah was taking his meal after returning from the field, her father and maternal grandfather were also nearby, her younger brother Banga Sah (Sugriv Sah) having taken his dinner was sleeping, her mother was serving meal. Meanwhile, seven respondents variously armed with farsa and other deadly weapons including ballam, country-made pistol, sword, dagger, residents of village Dehuri within Gazipur district of Uttar Pradesh, presently residing in village Siya Pokhar within Mohania Police station in the district of Rohtas entered the court-yard of her house, raised slogan in the name of goddess Sarswati, surrounded the inmates present in the house, took her father, mother, maternal grandfather and both the brothers into a room in the house, assaulted them with the weapons. There is specific overt act alleged against each of the seven accused named in the fardbeyan. Munna Sah assaulted Tulshi Sah with sword on his neck, Saryug Sah assaulted Tulshi Sah with dagger, Munna Sah also repeatedly assaulted Tulshi Sah on his neck, head, Saryug Sah, Sakaldeep Sah assaulted Jagannath Sah, the maternal grandfather of the informant with dagger, ballam respectively. The fardbeyan is specific that the five deceased died in the room. Accused No. 4 Kanhaiya Sah opened two rounds of firing causing injury to her father, maternal grandfather.



The younger brother of the informant Sugriv Sah @ Banga Sao has been assaulted by Munna Sah and Sakaldeep Sah, mother of the informant was assaulted by Munna Sah with sword and Saryug Sah with dagger. Accused No. 3 Mahendra Sah also opened fire from his gun causing injury to the mother of the informant. Besides seven accused persons named in the fardbeyan there were other 8-9 unknown miscreants, who also entered the court-yard and said to have assaulted the deceased. In all there were five casualty in the family. Fardbeyan was recorded next morning. Besides the informant Kashi Prasad Sah also put his signature over the fardbeyan. Fardbeyan was forwarded to Mohania Police Station for instituting the present case under Sections 147, 148, 149, 323, 324, 452, 302/34 of the Penal Code, Section 27 of the Arms Act with endorsement that A. Kumar Officer-in-Charge has already taken up investigation of the case.

3. In the light of the fardbeyan dated 28.10.1990 First Information Report was registered on 29.10.1990 at 8.50 A.M., forwarded to the court through special messenger but the same was received by Chief Judicial Magistrate, Bhabhua on 30.10.1990. Officer-in-Charge having recorded the fardbeyan took up the investigation of the case and first conducted the inquest on the five dead bodies on 29.10.1990 at 8.10, 8.25, 8.40, 9.00, 9.20 A.M. respectively, forwarded the dead body for post mortem, which was



conducted on 30.10.1990 from 10.00 A.M. onwards. After forwarding the dead body for post mortem Investigating Officer recorded further statement of the informant as also the police statement of the witnesses. In the light of the contents of the fardbeyan, further statement of the informant, police statement of the witnesses, contents of the inquest report and the post mortem report Investigating Officer submitted charge-sheet against seven accused persons put on trial. In the light of the charge-sheet cognizance was taken for the offences found true during investigation and after supply of police papers to the seven accused persons case was committed to the Court of Sessions. Sessions Court framed charge against the seven accused persons under order dated 01.08.1991 to which the accused persons pleaded not guilty and claimed to be tried.

4. During trial prosecution examined eleven witnesses. P.W. 1 Sabita Devi is the informant of the case. P.W. 2 Bal Kishun Sah, P.W. 3 Kashi Sah the two agnates of the maternal grandfather of the informant Jagganath Sah have been examined as eye-witness of the occurrence. P.W. 4 Saryug Sah, P.W. 5 Mahadeo Pandey are hearsay witnesses from the informant, as they are said to have learnt about the occurrence from her. P.W. 6 Barister Prasad is a formal witness to prove the inquest report of the five deceased. P.W. 7 Kameshwar Kharwar has been declared hostile. P.W. 8 Chilatu Gaud

has been tendered. P.W. 9 Harihar Singh is a formal witness as he proved the First Information Report. P.W. 10 Awadhesh Kumar, the then Officer-in-Charge, Mohania Police Station, who is the scribe of the fardbeyan and Investigating Officer of the case. P.W. 11 Dr. Kaushal Kishore conducted the post mortem on the dead body of the five deceased.

5. Besides the prosecution witnesses, defence also examined D.W. 1 Vidya Prasad Pandey and D.W. 2 Ram Bilash Prasad Seth. They have been examined to establish enmity between the parties.

6. Learned trial court has considered the evidence of the informant and the two eye-witnesses P.Ws. 2, 3 the agnates of Jagganath Sah. Trial court has chosen not to rely on the evidence of the informant as she has been declared hostile by the prosecution and nothing substantial has been extracted from her in cross-examination by the prosecution party. She has given a complete go-by to the narrative about the prosecution case, as set out by her in the fardbeyan. In her examination-in-chief itself informant (P.W. 1) has stated that in the night of the occurrence at 9.00 P.M. she was sleeping on a cot, her mother Prabhawati Devi, father Faudar Sah, two brothers Tulshi Sah, Sugriv Sah @ Banga and maternal grandfather Jagganath Sah were present in dalan. Informant also stated that her brother



Tulshi Sah was taking dinner, the accused persons, many in number, entered the house, raised slogan in the name of goddess Sarswati and assaulted her brothers Tulshi, Sugriv Sah @ Banga, mother, maternal grandfather and father with spear, sword killing all the five persons. Informant (P.W. 1) also stated in examination-in-chief that she did not identify any of the accused persons. The accused persons present in the dock are resident of the village as they have been given land in the village. She further stated that those present in the dock had not come to her house in the evening of the occurrence. From the evidence of informant (P.W. 1) it also appears that she denied the presence of P.Ws. 2, 3 agnates of her maternal grandfather at the place of occurrence in the fateful evening, as according to informant her maternal grandfather (deceased) was only present in her house in the evening of occurrence.

7. P.Ws. 2, 3 claimed in their evidence that they came to village Siya Pokhar from Akaurhi Fair and met Mahadeo Pandey and Kameshwar Kharwar, who asked them to come to village Akrohi as it was dark night. Both Mahadeo Pandey and Kameshwar Kharwar have been examined by the prosecution as P.Ws. 5, 7 but they have not supported such fact and thereby presence of P.Ws. 2, 3 at the place of occurrence becomes doubtful. Aforesaid aspect of the matter has been considered by the trial court in Paragraph 29 of the

impugned judgment.

8. The other witnesses examined by the prosecution are either hearsay or formal or have been tendered, as such, we see no reason to take a different view of the appraisal of the evidence made by the trial court to reverse the finding recorded by it. Government appeal is, accordingly, dismissed.

(V.N. Sinha, J.)

(Nilu Agrawal, J.)

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