

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.802 of 2012

[Against the judgment dated 04.07.2012 and the order of conviction dated 05.07.2012 passed by the Additional Sessions Judge, Rosera, Samastipur, in Sessions Trial No.627-A of 2003 arising out of Bibhutipur P.S. Case No.13 of 2002]

1. Sunil Kumar Singh @ Tuntun Singh, S/O Shri Ram Sewak Singh, resident of Village- Sakh Mohan, P.S.- Bibhutipur, District- Samastipur
.... Appellant/s

Versus

1. The State of Bihar
.... Respondent/s

With

Criminal Appeal (DB) No. 804 of 2012

[Against the judgment dated 04.07.2012 and the order of conviction dated 05.07.2012 passed by the Additional Sessions Judge, Rosera, Samastipur, in Sessions Trial No.627-A of 2003 arising out of Bibhutipur P.S. Case No.13 of 2002]

1. Madan Singh, S/O Shri Ram Sewak Singh, resident of village- Sakh Mohan, P.S.- Bibhutipur, District- Samastipur
.... Appellant/s

Versus

1. The State of Bihar
.... Respondent/s

Appearance:

(In CR. APP (DB) No. 802 of 2012)

For the Appellant/s : Mr. Vikram Deo Singh, Advocate
Mr. Sada Nand Roy, Advocate
For the Respondent/s : Mr. Uma Kant Shukla, Advocate
Mr. S. N. Prasad, APP

(In CR. APP (DB) No. 804 of 2012)

For the Appellant/s : Mr. Vikram Deo Singh, Advocate
Mr. Sada Nand Roy, Advocate
For the Respondent/s : Mr. Uma Kant Shukla, Advocate
Mr. Abhimanyu Sharma, APP

CORAM: HONOURABLE JUSTICE SMT. ANJANA PRAKASH

&

HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA

ORAL JUDGMENT

(Per: HONOURABLE JUSTICE SMT. ANJANA PRAKASH)

Date: 29-09-2015



1. Both the Appellants have been convicted under Section 302 Indian Penal Code and sentenced to undergo rigorous imprisonment for life with a fine of ₹10,000/- and in default of the same further simple imprisonment for one year and under Section(s) 364 and 149 Indian Penal Code for which they are sentenced to undergo rigorous imprisonment for ten years with a fine of ₹5,000/- and in default of same further simple imprisonment for six months. Further, both the Appellants have also been convicted and sentenced to undergo rigorous imprisonment for two years under Section 148 Indian Penal Code and four years rigorous imprisonment under Section 27(1) of the Arms Act with a fine of ₹5,000/- and in default of the same further simple imprisonment for six months.

2. The prosecution case, according to the Informant, Vishwanath Mahto (PW11) is that on 31.01.2002 they were holding a meeting against the atrocities committed by the Appellants in which number of persons had gathered. The meeting was being addressed at 4.30 PM by their leader, the deceased Ram Nath Mahto. Suddenly, at about 5.00 PM, the Appellants along with other supporters variously armed came there. Seeing them, there was a stampede in the meeting. The deceased then started imploring the



dispersing crowd not to be afraid of the accused but to face them at which he was dragged to a certain distance and shot at by the two Appellants and one Ajay Singh. According to him and rest of the witnesses, namely, Ram Uday Mahto (PW 5), Sito Sah (PW 10), Lal Bahadur Rai, not examined, Prabhu Rai (PW 1) hostile declared, Shiv Narain Yadav, not examined, Jagdish Mahto (PW 4), Sone Lal Mahto (PW 3), Navin Chandra Singh (PW 6) and Mukesh Singh (PW 7) witnessed the said occurrence.

3. During the trial, the prosecution examined thirteen witnesses, out of whom, PW 2, Rakesh Kumar Singh, PW 3, Sone Lal Mahto, PW 4 Jagdish Mahto, PW 5 Ram Uday Mahto, PW 6 Navin Chandra Singh, PW 7 Mukesh Singh, PW 8, Pawan Kumar Singh, PW 9 Lakshman Sah, PW 10, Sito Sah, and PW 11 Vishwa Nath Mahto, have deposed as eye witnesses. PW 13, Vidya Sagar Paswan is the Investigating Officer and PW 12, Dr. Arvind Kumar held Post Mortem Examination.

4. PW 1, Prabhu Rai, has been declared hostile. However, since he has not said anything of relevance in his evidence, his evidence is not being discussed here.

5. PW 2, Rakesh Kumar Singh, stated that on the date of occurrence a joint meeting was going on in which Birendra Singh and Ram Nath Mahto had beaten up one Neeraj Singh. After



this, there was *halla* and the villagers came in course of which shots were fired and Ram Nath Mahto was murdered. From his evidence, it cannot be conclusively concluded that he was an eye witness. He has only deposed about the occurrence but without specifying about the manner and participants of the murder. In cross-examination, he exonerates the Appellants which is of no consequence since it is not confirmed that he was an eye witness.

6. PW 3, Sone Lal Mahto, stated that on the date of occurrence the assembly was sitting protesting against the atrocities where deceased Ram Nath Mahto was giving his speech at about 4.35 PM, then the Appellants along with others are said to have reached there firing. A stampede then took place in course of which accused Mukesh Singh, Arjun Choudhary and Jagdish Mahto caught hold of deceased Ram Nath Mahto and dragged him 70-80 yards away and then Appellant Madan Singh is said to have fired on the chest, Tuntun Singh on the temple and Ajay Singh on the buttock, at which the deceased fell down. Then Raghu Nandan Sah is said to have assaulted the deceased with a wooden plank and Dablu Rajak is said to have spat on him. In cross-examination, he stated that he was a member of the political party which was addressing the assembly and that the police had come soon after the occurrence. Police picket was not posted there from before hand. A



suggestion was given to him that, in fact, on the said date Madan Singh was not present since he was in Patna to which he denied. He stated he was about 10 yards from the place of occurrence and reached the place of occurrence where Ram Nath Mahto had been shot at. He further clarified in his cross-examination that the accused persons had come firing with their guns at which a stampede had taken place; some had run away and some stood watching them. None of the witnesses had been injured and they were watching from the same place. He further explains the place of occurrence and that 5-7 shots had been fired one after other. He also stated that the deceased was not on inimical terms with any one. In cross-examination, he further clarifies that the police had come 1½ hours after the occurrence and taken his statement after the statement of Vishwanath Mahto, the Informant. The dead body had been removed by the District Administration. It was suggested to him that he had given a false statement on the account of being member of a political party and that the manner of occurrence was something else and the Appellants had been falsely implicated.

7. PW 4, Jagdish Mahto, stated that on the date of occurrence the assembly had gathered and protested against the atrocities of the *Gundas* in which the deceased was giving speech. Just then, the Appellants along with rest of the party came firing



with their guns at which there was a general confusion. When the people started running helter-skelter, the deceased is said to have exhorted them not to run and, in fact, to face them. At this, Appellant Madan Singh said that he would eliminate his *Netagiri* and the three accused caught hold and pulled away Ram Nath Mahto about 60-70 yards away. Appellants are said to have fired at the deceased. He was also sought to be threatened by one of the accused when he attempted to follow the deceased to the spot. He proved the Inquest Report (Ext.1-A). In his cross-examination, he stated that he was supporter of political party of Ram Nath Mahto and used to attend the meetings. Several questions were put to him about the mode of the assembly and how everyone was informed and attendance was taken. To a specific query as to whether police was posted at the village from before hand, he replied in negative. He stated about the presence of rest of the witnesses and the topography of the place. He also stated that he had been in jail and it was suggested to him that on account of some previous enmity between the parties the Appellants had been roped in by him. He stated that he was in the meeting right from 11 AM and was sitting till the occurrence took place. He also explained that the meeting had been specially held protesting against the activities of the two Appellants. In his cross-examination, he further clarified that soon

after the occurrence he had been examined by the police.

8. PW 5, Ram Uday Mahto, stated that he reached the meeting at about 10.00 AM and the deceased reached there at about 12'O clock. The meeting had been held protesting against the *Rangdari* of the Appellants. Around 4.30 PM, the Appellants along with rest of the party reached there firing from their guns and caught hold of the deceased intimidating him for being a *Neta*, dragged and shot him. He tried to follow the accused Appellants and pleaded with them but to no avail. He also stated that the police came to the place of occurrence at about 8.00 PM and took his statement. In his cross-examination, he was also questioned as to how people were called in the meeting and the manner in which subscription etc. was paid. A number of questions have also been put to him with regard to local leaders and their activities which have no relevance for the purpose of this case. In his cross-examination, he stated that the Informant Vishwa Nath Mahto was the first person to have spoken against both the Appellants and denied about any previous enmity between the parties. Minor contradiction as to whether he had stated earlier that the deceased had been held by his arm by accused Jagdish or by his neck. He asserted that he had stated that Madan Singh had fired at chest, Tuntun Singh on the temple, whereas, Ajay Singh fired on the

buttock.

9. PW 6, Navin Chandra Singh, another witnesses stated that he reached the meeting at about 12.30 in the morning where rest of the members had gathered along with the leaders. At about 4.00 PM, the deceased started to give speech and around 5.00 PM two Appellants along with rest of the accused persons came firing from their guns and he repeats what the earlier witnesses have said. He is said to have pleaded with the accused persons when they were dragging away the deceased but he was also threatened in consequence. He stated that Appellant Tunun Singh had asked for *Rangdari* from Pawan Kumar Singh (PW 8) upon which this meeting had been held. Several questions have been asked with regard to his political affiliation and the political party operating in that area. He also explains the meeting point was an intersection and many houses were located there. He confirms the presence of rest of the witnesses. His attention was drawn to the earlier statement that he had not stated that about 12.00 PM, the Informant had begun his lecture and that he had stated that Madan Singh had fired the first round and then Tuntun Singh and Ajay Singh had fired and co-accused Jagdish had assaulted on leg and Dabloo Rajak is said to have spat on him. It was also suggested that since he belonged to same political party as the deceased and hence he has given false

evidence implicating the Appellants.



10. PW 7, Mukesh Singh, also stated that he was also attending the assembly. At about 5.00 PM the accused persons came variously armed firing from their guns when the deceased was addressing the crowd. He was then dragged away by the accused persons, who shot him due to which he died. He has been questioned with regard to political leaders and presence of other witnesses. He stated that about 10-12 firings had been made by the accused persons and that the people had started dispersing when the accused persons came. He had been asked to explain the exact details as to where the accused were facing but he says that he did not remember. He has also confirmed that he gave statement before the SP/DM/Dy. SP, who had come there and his statement had been recorded.

11. PW 8, Pawan Kumar Singh, stated that on the date of occurrence they were protesting against the atrocities of Tuntun Singh, Madan Singh because they had demanded Rangdari from him. He had also given a petition before the Dy. Superintendent of Police on 22.12.2000 in this regard but no action had been taken. He then sent a letter to the Superintendent of Police by registered post and the local CPM Office at which it was decided that a protest meeting be held in its regard. Resultantly, on



31.01.2002, they were sitting in the meeting along with rest of the party members when suddenly the accused persons variously armed came firing and pulled away the deceased and shot at him due to which he died. He stated that his statement was taken on the same night at the place of occurrence itself. He has also been questioned with regard to political activities of the persons in that area and land litigation but it does not seem to have any relevance to the present case. He clarified that he gave statement to the Investigating Officer at about 7.30 PM and before that Vishwa Nath Mahto had already given statement which was took about 15 minutes. He admits that he had not told the Investigating Officer that Tuntun Singh used to demand *Rangdari* repeatedly and had stated that Madan Singh fired on the chest, Tuntun Singh on the temple and Ajay Singh on buttock. It was suggested to him that manner of occurrence was something else and the accused persons had been falsely implicated.

12. PW 9, Laxman Sah, stated that on the date of occurrence while he was sitting along with others in the meeting and Ram Nath Mahto had begun his speech at about 4.30 PM, the accused persons with their arms came and caused commotion in which the persons attending the meeting started running here and there. The deceased then pleaded that they should not run and instead face the *Gundas* at which the accused persons caught hold



of him and dragged him away and shot him dead about 60-70 yards away. Number of questions had been put with regard to population in the village and where his village is located. He has also been questioned with regard to mode in which such protest meetings are held and about the information given to the BDO and other officials. He clarified that the Informant had given earlier call for meeting which was attended by number of persons. On a specific query, he stated that he was not a witness in any other case against the present Appellants. He further stated that all the persons, who had gathered around, were of the Communist Party. In paragraph 41, he stated that his statement was recorded 5-6 hours after the occurrence and confirmed the fact that he had stated in the earlier statement that the deceased had been dragged away, shot at by Madan Singh, Tuntun Singh on the chest and temple respectively. It was suggested to him that, in fact, he supported the occurrence only because he belonged to the Communist Party.

13. PW 10, Sito Sah, is the next witness, who is said to have attended the meeting where the deceased was giving speech, and stated that at about 5.00 PM the accused persons variously armed came firing at which the persons gathered started to run away. The deceased then assured the persons as not to be afraid at which the accused persons caught hold of him, take him away 50-60



yards and the Appellants and others shot him dead. In his cross-examination, he admits that he was a member of the Communist Party. Number of questions have been put to him with regard to Office Bearers of his party. He explained that no one shouted because they were afraid. He stated that the injury on the deceased had charring marks and bleeding when he reached the deceased. He stated that the police had come around 7.00 PM and had waited till next morning at the place of occurrence along with 100-150 persons. He stated that he had been examined at the place of occurrence itself and then at the police station on 31.01.2002. His attention was drawn to the earlier statement in regard to the deceased being pulled away by Mukesh Singh and Arjun Choudhary by neck about 50-60 yards away where he was shot by Madan Singh on the chest and Tuntun Singh on the temple. It was also suggested to him that the Appellants had been implicated on account of some other disputes.

14. PW 11, Vishwa Nath Mahto, is the Informant, who stated that on 31.01.2002 they were protesting against the antisocial activities of Tuntun Singh in a meeting organized by the CPM which started about 12.00 Noon and was attended by number of persons. Ram Nath Matho is said to have started speech at about 4.30 PM and about 5.00 PM the Appellants along with others came



there firing from their guns at which the persons started running helter-skelter. Ram Nath Mahto then assured the audience not to be afraid and instead face antisocial persons at which he was threatened by the group of accused and pulled away and then shot at. He proved the First Information Report which is Ext.1. Number of questions have been put with regard to activities in his area more in reference to the political persons involved. He conceded that he was accused in one criminal case because of some dispute and that there was no previous enmity between the deceased and the Appellant Madan Singh. The defence has cross-examined him as to how the meeting was convened and what was the role of Pawan Kumar Singh in the entire transaction. He has been asked with regard to presence of articles being at the assembly site including motorcycle, cycle etc. He stated that after the occurrence the DM/SP and other officials had come at about 6.00 PM. He was examined by the Investigating Officer, who had collected blood stained earth and other articles from the place of occurrence. He has been cross-examined with reference to his earlier statement as to when he reached the meeting site and that he had not pleaded with the accused to leave Ram Nath Mahto and other details about the meeting.

15. PW 12, Dr. Arvind Kumar, is the doctor, who

performed Post Mortem Examination and found following injuries
on the person of the deceased:

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- (i) Circular lacerated wound with inverted margin with blackening and charring around the wound, size $\frac{1}{2}$ " diameter into cavity deep, present behind the right ear (wound of entry).
 - (ii) Oval lacerated wound with everted margin size 2" x $\frac{1}{2}$ " x cavity deep on left side of parietal scalp (wound of exit). The injury no.(i) and (ii) are communicating with each other.
 - (iii) One circular lacerated wound with inverted margin with blackening and charring around the wound on right side of upper part of chest size $\frac{1}{3}$ " x cavity deep (wound of entry).
 - (iv) One lacerated wound with everted margin size $\frac{1}{2}$ " x cavity deep on the back of thorax just below the spine of right scapula (wound of exit). The injury no.(iii) and (iv) are communicating with each other.
 - (v) One oval lacerated wound with inverted margin with blackening and charring around the wound size $\frac{1}{3}$ " x 1" x cavity deep on the upper part of right buttock (wound of entry).
 - (vi) One oval lacerated wound with everted margin size $\frac{1}{2}$ " x $1\frac{1}{2}$ " x cavity deep on lower part of abdomen 3" below and right lateral to umbilicus (wound of exit). Injury No.(v) and (vi) are communicating with each other.

16. The Investigating Officer (PW 13) stated that on 31.01.2013 he reached the place of occurrence and recorded the statement of the PW 11, Vishwa Nath Mahto. He proved the First



Information Report as Ext.4. He further stated that he prepared the Inquest Report (Ext.5) in presence of the witnesses and recovered three pellets and wooden plank from the place of occurrence which he seized and prepared Ext.6 also in presence of the witnesses. He describes the place of occurrence being Azad Chowk. At that place, the pellets and wooden planks were recovered. He seized the blood stained earth also from there. In cross-examination, he stated that on 31.01.2002 at 5.00 PM, he received information from Arvind Das that Ram Nath Mahto had been murdered by the group of Tuntun Singh with fire arms of which he made Sanha Diary entry No.656 dated 31.01.2002. He stated that the place of occurrence was 14 KM from the Police Station and he did not record the statements of the seizure list witnesses. He stated that he did not mention the details of the place in the Case Diary. It was suggested to him that he had not conducted the investigation properly to which he vehemently denied.

17. Counsel for the Appellants submits that admitted position is that it was Pawan Kumar Singh (PW 8) from whom *Rangdari* had been demanded by the accused at which the assembly was protesting. He was present at the meeting yet no effort was made to harm him in any manner. This falsifies the prosecution case so far as the motive is concerned. Further submission is that the



deceased himself was an accused in a murder case and, in fact, it was suggested to the Informant that the deceased had grabbed land of a widow and a *Mahanth* as also a house and it is quite possible that he may have been killed in another occurrence in another manner. Further submission is that even though the police came to the place of occurrence at 6.00 PM, the Investigating Officer firstly prepared Inquest Report and thereafter recorded the *fard-e-beyan* of the Informant (PW 11) at 7.30 PM. This further gives rise to suspicion that, in fact, the prosecution was biding time as to what information be given to the police for which reason there was delay. Also submits that even though the First Information Report was instituted at 3.40 AM on 01.02.2002, it was sent to the Court only on 02.02.2002 which further leads to suspicious conduct of the prosecuting agency. The fact of the Informant not giving his *fard-e-beyan* as soon as the police arrived suggests that he was not present there. Admittedly, Arvind Das and Ram Narain Mahto, one of whom had given information to the occurrence to the police on telephone as also seizure list witness were the eye witnesses but they were not examined.

18. On the other hand, counsel for the Informant submits that there is consistent eye witness account of the occurrence which is further supported by the independent objective

evidence such as that of the Investigating Officer and the doctor, who found corroborating fire arm injury on the person of the deceased. In such circumstances, the prosecution has succeeded in proving its case beyond all reasonable doubt and there being no merit in the appeals, it should be rejected.

19. Counsel for the State adopts the aforesaid arguments without any further elaboration on any point.

20. On going through the arguments advanced, following points emerge:

- (a) PW 3, Sone Lal Mahto, PW 4, Jagdish Mahto, PW 5, Ram Uday Mahto, PW 6, Navin Chandra Singh, PW 7, Mukesh Singh, PW 8, Pawan Kumar Singh, PW 9, Laxman Sah, PW 10, Sito Sah, PW 11, Vishwa Nath Mahto, have deposed as eye witness.
- (b) The place of occurrence as suggested by these witnesses was inspected by PW 13, who found blood stained earth, empty cartridges and wooden plank there.
- (c) The doctor found three fire arm injury on the person of the deceased. Further, there was blackening around the injuries suggesting close

fire.

21. There is no doubt that the seizure list (Ext.6) was prepared even before the *fard-e-beyan* was recorded in which circumstances *fard-e-beyan* would be hit under Section 162 Cr. P. C., however, since the *fard-e-beyan* is only for the purpose of corroboration of prosecution case generally even if it is disregarded the eye witness account of the Informant and others remain.

22. We find that there is consistent eye witness account of the witnesses in regard to their presence, the fact that the deceased was giving speech when the accused persons came and that he tried to reason with the departing audience that they should face the accused at which he was pulled away to a distance and shot dead. We also find that the occurrence had taken place at 5.00 PM and immediately information was sent to the Police Station at which PW 13 arrived there and without delay recorded the statement of the Informant at 7.30 PM. This suggests that there was no time for any preparation in regard to the statement that was to be given to the police. We also find that even though the witnesses have been cross-examined at great lengths but none of them taint their evidence in respect to the manner of occurrence or the names of the perpetrators. Also the minor contradictions which had been suggested to the witnesses have not even been put to Investigating

Officer which makes the answers to the said suggestions immaterial.

23. From the evidence of the witnesses it appears there was no previous enmity between the parties even though there were political differences and reaction to the excess of the Appellants. So, there does not appear any reason for false implication of the Appellants.

24. In such circumstances, when the eye witness accounts cannot be faulted for any reason which is further buttressed by objective evidence of the doctor and the Investigating Officer, who respectively found corresponding injury on the person of the deceased and the place of occurrence was fixed, we find it difficult to interfere with the conviction and sentence of the Appellants.

25. For the aforesaid reasons, both the appeals are **dismissed.**

(Anjana Prakash, J)

(Rajendra Kumar Mishra, J)

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J.Alam/-

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