

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.1174 of 2011

[Against the judgment and order of conviction dated 30th November, 2011, and 3rd December, 2011, respectively passed by the Additional Sessions Judge, (Fast Track Court No.5), Bhojpur at Ara, in Sessions Trial No.138 of 2001]

- 1. Nripendra Singh, S/O Late Jaimangal Singh,
- 2. Hari Singh, S/O Dhenuka Singh, both resident of village Barauli, P.S.- Agion Bazar, Distt.- Bhojpur
- 3. Buchan Tiwary, S/O Dau Tiwary, resident of village- Khaira, Tiwaridih, P.S. Agion Bazar, Distt. Bhojpur

.... Appellant/s

Versus

- 1. The State of Bihar

.... Respondent/s

With

Criminal Appeal (DB) No. 1231 of 2011

[Against the judgment and order of conviction dated 30th November, 2011, and 3rd December, 2011, respectively passed by the Additional Sessions Judge, (Fast Track Court No.5), Bhojpur at Ara, in Sessions Trial No.138 of 2001]

- 1. Ajay Singh, son of Late Ram Sajiwan Singh,
- 2. Surendra Singh, son of Late Saheb Singh,
- 3. Ram Kumar Singh @ Pappu Singh, son of Ram Shankar Singh,
- 4. Harendra Singh, son of late Dau Singh, all resident of village- Barouli, P.S.- Piro, District- Bhojpur

.... Appellant/s

Versus

- 1. The State of Bihar

.... Respondent/s

With

Criminal Appeal (DB) No. 163 of 2012

[Against the judgment and order of conviction dated 30th November, 2011, and 3rd December, 2011, respectively passed by the Additional Sessions Judge, (Fast Track Court No.5), Bhojpur at Ara, in Sessions Trial No.138 of 2001]

- 1. Amrendra Singh, S/O Late Jaimangal Singh, R/O Village - Barauli, P.S.- Agion Bazar, Distt. - Bhojpur

.... Appellant/s

Versus

1. The State of Bihar

.... Respondent/s

Appearance :

(In CR. APP (DB) No. 1174 of 2011)

For the Appellant/s : Mr. Rana Pratap Singh, Sr. Advocate with
Mr. Ravindra Kumar, Advocate

For the Respondent/s : Mr. Abhimanyu Sharma, APP

(In CR. APP (DB) No. 1231 of 2011)

For the Appellant/s : Mr. Krishna Prasad Singh, Sr. Advocate with
Ms. Meena Singh, Advocate

For the Respondent/s : Mr. Ashwani Kuamr Singh, APP

(In CR. APP (DB) No. 163 of 2012)

For the Appellant/s : Mr. Rana Pratap Singh, Sr. Advocate with
Mr. Ravindra Kumar, Advocate

For the Respondent/s : Mr. S. N. Prasad, APP

CORAM: HONOURABLE JUSTICE SMT. ANJANA PRAKASH

&

HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA

ORAL JUDGMENT

(Per: HONOURABLE JUSTICE SMT. ANJANA PRAKASH)

Date: 12-02-2016

1. Appellant Amrendra Singh has been convicted under Section 302 Indian Penal Code and sentenced to undergo rigorous imprisonment for life with a fine of ₹10,000/-, whereas, Appellant Ajay Singh and Surendra Singh are convicted under section 302/34 and 324/34 Indian Penal Code and Section 27 of the Arms Act and Appellants, namely, Hari Singh, Nripendra Singh, Harendra Singh, Buchun Tiwary and Ram Kumar Singh have been convicted under Section 302/34 Indian Penal Code and Section 324/34 Indian Penal Code and sentenced to undergo rigorous imprisonment for life under Section 302/34 Indian Penal Code with fine of ₹5,000/- each. No separate sentence was awarded under Section 324/34 Indian Penal Code and under Section 27 of the Arms

Act by judgment and order of conviction dated 30th November, 2011 and 3rd December, 2011, respectively passed by the Additional Sessions Judge, FTC-V, Ara, in Sessions Trial No.138 of 2001 arising out Piro P.S. Case No.142 of 1998.

2. The case of the prosecution according to the Informant Uma Rai (PW 6), is that on 27.08.1998 when he was going along with his son on a MAXI, he saw his co-villager Suresh Paswan @ Suresh Ram (PW 3) also sitting in the same MAXI. Two of the Appellants, namely, Hari Singh and Buchun Tiwary were travelling on the same MAXI. When the vehicle reached Barauli More, the two Appellants got it stopped and pulled down the deceased Harendra Rai on the point of pistol. When he got down, Surendra Singh having pistol, Pratap Singh having gun, Ajay Singh having pistol, Dharmraj Singh and Pappu Singh having Katta in their hands came there. They started firing and blocked the road. Appellant, Amrendra Singh, and Nripendra Singh had Fasuli in their hands, whereas, Guddu Singh having pistol, Rama Shankar Singh having Katta, and as stated earlier Appellant Hari Singh also had a Katta in his hand. Sheo Bachan Singh, Appellant-Harendra Singh, Raju Singh and Ramu Singh also reached there. They then started assaulting the deceased and felled him down and thereafter Appellant-Amrendra Singh cut the neck of Harendra Rai with

Fasuli, whereas, Raju Singh fired at him. Appellant Hari Singh also assaulted the deceased with Hasuli on right leg on account of which his son died at the spot. He alleged that the reason for the murder was as a backlash of the murder of Jai Mangal Singh, father of Amrendra Singh and Nripendra Singh, who belonged to the CPI-ML.

3. It appears that only present eight Appellants were put on trial, whereas, some of the accused persons were not.

4. During trial, the prosecution examined, six witnesses. PW 1, Bhikhari Paswan, who belonged to Barauli, stated that his co-villagers Harendra Rai was dead and also that he had not seen the occurrence at which he was declared hostile.

5. PW 2 (Seo Narain Ram) merely stated that Harendra Rai had been murdered at Barauli More and he had not seen the occurrence. He also stated that the accused persons were of his village and he identified them.

6. PW 3 (Suresh Paswan), who is the FIR witness and co-villager of the Informant, stated that while he was in his village Harendra Rai had been murdered at Barauli. He was declared hostile.

His attention was drawn to the earlier statement that he had stated that all the accused persons had fired at the deceased. He

also stated that in cross-examination he explained that his village is at about 3 KM away from the place of occurrence.

7. PW 4 (Dr. Rajiv Raman) is the doctor, who conducted Post Mortem Examination, and found following injuries on the person of the deceased.

- (I) Incised wound 5" x 2" x trachea deep over anterior part of the neck.
- (II) Incised wound 2" x 1/2" x muscle deep over right foot.
- (III) Incised wound 2" x 3/4" x muscle deep below right knee.
- (IV) Incised wound 1" x 1/3" x muscle deep made on right leg laterally

Time elapsed since death- Within 6 to 36 hrs.

8. PW 5 (Ram Ayodhya Ram) stated that on the date of occurrence while he was working in his field he had heard sound of firing and heard that Harendra Rai had been killed. He saw some person running and also the father Harendra Rai screaming. He saw all the accused persons running away as also that Harendra Rai belonged to CPI-ML. He stated that accused persons belonged to his village. In his cross-examination, he stated that his village was 1 km from Barauli More. He further stated in cross-examination that father of Appellant Harendra Rai i.e. Jai Mangal Rai had been killed in which one Dhan Lal Rai has been convicted.

9. PW 6 (Uma Rai), the sole eye witness, stated that on the date of occurrence, he was travelling along with his son on a



MAXI he saw his co-villager Suresh Paswan also sitting therein. Hari Tiwari and Buchun Tiwari whipped out their pistol and got the deceased down and thereafter Surendra Singh, Pratap Singh, Ajay Singh, Dharam Raj Singh and Pappu came there, who started firing and blocked the road. Number of accused persons including some of the Appellants were with pistol. He stated that deceased was assaulted with fists and slaps and thereafter he fell down on the earth. He was threatened by Shiv Bachan Singh and Raju Singh, so, he did not react. After this, Amrendra Singh cut the neck of his son with *Fasuli* and Raju fired at him as also Hari Tiwari assaulted him with *Fasuli*. Thereafter, they fled away. He stated that the police came after the occurrence and recorded his *fard-e-bayan* there itself which he proves as Ext.2. In cross-examination, he explained as to how one travels from his village to the place where he had to go and that his village was merely 1 km from Barauli More. He also stated that after the accused persons fled away he went near his son and no one had attempted to assault him nor had he taken any step to save his son. He further stated that the accused persons were firing and deceased had five injuries on his person including a gun shot injury. He did not send any one to inform the police and kept sitting near the dead body till the police came. He admitted that his son belonged to CPI-ML of which the legislator was one Chandra Deep

Singh, who did not come on hearing about the occurrence. It was suggested to him that the Appellants have been named at the behest of some local politician.

10. On going through the evidence of the witnesses, we find that apart from PW 6 (Uma Rai) none else stood in support of the prosecution case. Ram Ayodhya Ram, who was co-villagers of the Appellants and had reportedly seen the miscreants running away from there, did not name the present Appellants even though he was on the factum of occurrence.

11. We find that in the *fard-e-bayan* Suresh Ram has been mentioned as one of the witness, who was sitting in the MAXI bus, but when he was examined as PW3, he denied knowledge of the occurrence. We find that his attention was drawn to the earlier statement and he has stated that the accused persons including the Appellants had caused the death of the deceased by firing which is totally contradictory to the prosecution case.

12. We also find that the place of occurrence is situated at a busy area, inasmuch as, many villages were scattered nearby but none has come to support the prosecution case even as corroborative witness. The motive which has been alleged is contrary to the prosecution case since it has been stated that the deceased himself was an active member of the CPI-ML to which Jai



Mangal Singh, father of the Appellants Amrendra Singh and Nripendra Singh also belonged and had been killed earlier. So, there was no question for the Appellants being involved in his murder.

13. We also note from the evidence of PW 5 (Ram Ayodhya Ram) that, in fact, one Dhan Lal was convicted for the murder of Jai Mangal Singh. We, thus, find that the motive totally contradicts the prosecution case.

14. It also does not appear credible that when there was intent to commit the murder of the deceased, why his father, who was similarly placed, was spared to depose later on as an eye witness. He himself stated that he did not take any steps to save his son, who was being assaulted in front of him which is not the normal conduct of a parent. The fact that he did not take any pain to inform the police, whereas, the Police Station is situated at only 5 KM and the area was motorable creates another suspicion in the mind as to whether he was, at all, present when the occurrence had taken place or it was only later on speculation he instituted the *fard-e-bayan*. Further reason for disbelieving him is that though it is his consistent story that the deceased was shot at and he had seen fire arm injury on his person, but the doctor did not find any fire arm injury, thus, leaving us to speculate on the manner of occurrence.

15. The prosecution in having failed to examine the



Investigating Officer, who alone could have solve the riddle of the occurrence of murder, has caused great prejudice which benefit would automatically go to the accused.

16. In such circumstances, we have no option but to set aside the judgment and order of conviction dated 30th November, 2011 and 3rd December, 2011, respectively passed by the Additional Sessions Judge, FTC-V, Ara, in Sessions Trial No.138 of 2001 arising out Piro P.S. Case No.142 of 1998, and acquit all the Appellants of the respective charges levelled against them.

17. The Appellant Amrendra Singh (Cr. Appeal No.163 of 2012), who is in custody, is directed to be released forthwith, if not wanted in any other case. Other Appellants are on bail and they are discharged from the liabilities of their respective bail bonds.

18. In the result, all the appeals are **allowed**.

(Anjana Prakash, J)

AFR
J.Alam/-

(Rajendra Kumar Mishra, J)

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