

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.287 of 2015

(Against the Judgment of conviction dated 19.01.2015 and Order of sentence dated 20.01.2015 passed by the 7th Additional Sessions Judge, Muzaffarpur, in Sessions Trial No. 341 of 2012)

- 1. Raj Kumar Sahni, Son of Nagina Sahni.
 - 2. Mahesh Sahni, son of Yugeshwar Sahni.
 - 3. Ganga Sahni, son of Late Deyal Sahni.
- All resident of village- Chakki Sohagpur, P.S.- Paroo, District- Muzaffarpur.

.... Appellants.

Versus

The State of Bihar

.... Respondent.

with

Criminal Appeal (DB) No. 151 of 2015

(Against the Judgment of conviction dated 19.01.2015 and Order of sentence dated 20.01.2015 passed by the 7th Additional Sessions Judge, Muzaffarpur, in Sessions Trial No. 463 of 2010)

Ajay Kuer, Son of Anrudh Kuer, Resident of Village - Chaki Sohagpur, P.S. - Paroo, District - Muzaffarpur.

.... Appellant.

Versus

The State of Bihar

.... Respondent.

with

Criminal Appeal (DB) No. 281 of 2015

- 1. Sanjay Sahni, son of Ganga Sahni.
- 2. Shambhu Sahni, son of Ganga Sahni.
- 3. Nagina Sahni, son of Anandi Sahni, All resident of village - Chakki Sohagpur, P.S. - Paroo, District - Muzaffarpur.
- 4. Ram Lagan Sahni, son of Late Rajkoshi Sahni.
- 5. Baldeo Sahni, son of Late Mathura Sahni.
- 6. Shailendra Ram, son of Late Angadh Ram, Resident of village - Kamalpur, P.S. - Paroo, District - Muzaffarpur.
- 7. Sanjiwan Ram, son of Jatai Ram.
- 8. Jagan Ram, son of Amir Ram.
- 9. Ramashish Sahni,son of Raj Keshi Sahni.

10. Daroga Sahni, son of Ganga Sahni.

11. Ram Babu Sahni, son of Bindeshwar Sahni,

All residents of village - Chakki Sohagpur, P.S. - Paroo, District - Muzaffarpur.

.... Appellants.

Versus

The State of Bihar.

.... Respondent.

Appearance :

(In CR. APP (DB) No.287 of 2015):

For the Appellant/s : Mr. Chitranjan Sinha, Senior Advocate, Mr. Kamlesh Prasad, Mr. Sudish Kumar and Mr. Ashok Kumar, Advocates.

(In CR. APP (DB) No.151 of 2015):

For the Appellant/s : Mr. Vindya Keshri Kumar, Senior Advocate, Mr. Niraj Kumar @ Saith, Mr. Satyendra Narayan Singh, Advocates.

(In CR. APP (DB) No.281 of 2015):

For the Appellant/s : Mr. Kanhai Prasad Singh, Senior Advocate, Mr. Akhileshwar Prasad Singh, Senior Advocate, Mr. Kamlesh Prasad, Mr. Sudish Kumar, Mr. Rakesh Kumar Sinha, Mrs. Anita Kumar Singh, Mr. Rakesh Ranjan, Advocates.

For the State : Mr. Ashwani Kumar Singh, A.P.P.
Mr. Abhimanyu Sharma, A.P.P.

CORAM: HONOURABLE JUSTICE SMT. ANJANA PRAKASH

and

HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA

ORAL JUDGMENT

(Per: HONOURABLE JUSTICE SMT. ANJANA PRAKASH)

Date: 30-06-2016

The Appellants of Criminal Appeal (DB) No.287 of 2015

have been convicted under Sections 147, 148, 149 and 302 of the Indian Penal Code and Section 27 of the Arms Act and sentenced to undergo rigorous imprisonment for life under Section 302 of the Indian Penal Code with fine of Rs.10,000/-, and sentenced to undergo rigorous imprisonment for five years under Section 27 of the Arms



Act with fine of Rs.5000/-, in default of payment of fine, to undergo further rigorous imprisonment for one year vide Judgment of conviction dated 19.01.2015 and Order of sentence dated 20.01.2015 passed by the 7th Additional Sessions Judge, Muzaffarpur, in Sessions Trial No.341 of 2012. However, no separate sentence was awarded under Sections 147, 148 and 149 of the Indian Penal Code. The Appellants of Criminal Appeal (DB) Nos.151 of 2015 and 281 of 2015 have been convicted under Sections 147, 148, 149 and 302 of the Indian Penal Code and Section 27 of the Arms Act and sentenced to undergo rigorous imprisonment for life under Section 302 of the Indian Penal Code with fine of Rs.10,000/-, and sentenced to undergo rigorous imprisonment for five years under Section 27 of the Arms Act with fine of Rs.5000/-, in default of payment of fine, to undergo further rigorous imprisonment for one year vide Judgment of conviction dated 19.01.2015 and Order of sentence dated 20.01.2015 passed by the 7th Additional Sessions Judge, Muzaffarpur, in Sessions Trial No.463 of 2010. However, no separate sentence was awarded under Sections 147, 148 and 149 of the Indian Penal Code.

2. The case of the prosecution, according to the Fardbeyan of the Informant Deepak Kumar Singh (P.W.9), is that on 27.07.2008 at about 01.00 P.M. while he alongwith the two deceased and rest of the family members were sitting and talking, 19 accused persons

including the Appellants variously armed came and surrounded his brother Pappu Singh and Pawan Singh and, thereafter, they ordered that they should be killed. Hearing this, both the deceased ran and hid themselves in the house of Sanjeevan Ram. The Informant also ran and hid himself in the adjacent hut and from the jute curtain, he saw his brother Pappu Singh being fired at by the accused Ganga Sahni, Daroga Sahni, Sahindra Ram, Shailndra Ram, Ram Lagan Sahni and Ahay Kuer on account of which his brother Pappu Singh fell down dead. He states as to how each of the persons were specifically fired at the deceased Pappu Singh. He further narrated that thereafter, the accused Ganga Sahni, Ajay Kuer, Sahindra Ram, Shailndra Ram, Ramashish Sahni and Jagan Ram fired at the deceased Pawan Singh on account of which he also fell down dead. The accused persons then pulled out their dead bodies and kept the same upon each other outside the house. He alleged that Sipahi, son of accused Ganga Sahni, who was in jail, had conspired to kill them in pursuance to which both the deceased were killed. Thereafter, the accused Ajay Kuer and Ganga Sahni fled away on the motorcycle of Pawan Kumar. He stated that P.W.1 Suresh Singh, P.W.2 Shyam Kumar Singh alias Shambhu Singh, P.W.3 Sanjeet Singh, P.W.6 Baijnath Singh, P.W.8 Most. Champa Devi and others had seen the occurrence. This statement was given in presence of P.W.1 Suresh Prasad Singh.

3. It appears that two separate trials were held in regard to the present Appellants. Whereas 13 Appellant have faced trial in Sessions Trial No.463 of 2010, 3 Appellants faced trial in Sessions Trial No.341 of 2012. Whereas 12 witnesses were examined in Sessions Trial No.463 of 2010, in equal number, the same witnesses were examined in the subsequent trial (Sessions Trial No.341 of 2012).

4. P.W.1 Suresh Prasad Singh was examined as P.W.4, P.W.2 Shyam Kumar Singh alias Shambhu Singh was examined as P.W.7, P.W.3 Sanjeet Singh was examined as P.W.1, P.W.4 Manager Singh was examined as P.W.2, P.W.5 Baleshwar Singh was examined as P.W.3, P.W.6 Baijnath Singh was examined as P.W.5, P.W.7 Radhika Devi was examined as P.W.6, P.W.8 Most. Champa Devi was examined as P.W.8, P.W.9 Deepak Kumar Singh was examined as P.W.9, P.W.10 Dr. Sohan Prasad Choudhary was examined as P.W.10, P.W.11 Ramesh Dubey was examined as P.W.11 and P.W.12 Vinay Kumar Singh was examined as P.W.12.

5. Out of the aforesaid witnesses, P.W.1 Suresh Prasad Singh, P.W.2 Shyam Kumar Singh, P.W.8 Most. Champa Devi and P.W.9 Deepak Kumar Singh, the Informant, have supported the prosecution case and they all belong to the same family and are close relations of the deceased Pappu Singh. Whereas P.W.1 Suresh Prasad

Singh, P.W.2 Shyam Kumar Singh alias Shambhu Singh are the brothers of the deceased Pappu Singh, P.W.8 Most. Champa Devi is the mother of the deceased Pappu Singh. P.W.3 Sanjeet Singh is a formal witness, P.W.4 Manager Singh, P.W.5 Baleshwar Singh, P.W.6 Baijnath Singh and P.W.7 Radhika Devi did not support the case of the prosecution and have been declared hostile. P.W.10 Dr. Sohan Prasad Choudhary held the Post-Mortem Examination of both the deceased and proved the Post-Mortem Examination Reports of the two deceased whereas P.W.11 Ramesh Dubey is a formal police officer and P.W.12 Vinay Kumar Singh is the Investigating Officer of the case.

6. P.W.1/P.W.4 Suresh Prasad Singh, who deposed as an eye witness, stated that on the date of occurrence while he alongwith the Informant, the two deceased, P.W.8 Most. Champa Devi and neighbour Baijnath Singh (P.W.6) were sitting and chatting in the Bathan, all the accused persons including the Appellants variously armed came there. As soon as they arrived, the Appellant Ganga Sahni said that Pappu Singh and Pawan Singh should be killed. Hearing this, both of them ran and were chased by the accused persons. He and rest of the family also followed them. Then he saw the two having gone to the hut of Sanjeevan Ram where all the accused persons started variously firing at them. When the two fell

down dead, their dead bodies were pulled out from the house and were kept upon each other. He stated that he had seen the occurrence from the door of Bhadai Ram and Shivbalak Ram. He proves his signature on the Fardbeyan which is Ext.1 and that of on the Inquest Reports, which is Exts.2 and 2/1.

In cross examination, he stated that the Appellant Ajay Kuer used to live about 500-700 yards away from his house. It further appears from the trend of his cross examination that the village was divided in two political groups, one to which the present Appellants belonged and the rest which belonged to the group of P.W.1 Suresh Prasad Singh. He stated that in the year 2006, his wife had contested the election in which election even the Appellant Ganga Sahni had contested and won. He further stated that the Appellant Ganga Sahni had become an accused in a case in the year 2007 whereafter he absconded, then the Appellant Ajay Kuer assumed the charge of Mukhiya on account of which he and his wife were severely aggrieved. He further stated that the house of Bhadai Ram from where he had seen the occurrence was 50 feet away from the hut of Sanjeevan Ram. He further stated that he and his family members were accused in a case instituted for the offence under Section 307 of the Indian Penal Code which was instituted by the Appellant Ram Lagan Sahni and Ram Lagan Sahni, Lila Sahni, Sikandar Sahni,

Buchan Sahni, Prabhu Sahni etc. were witnesses in the said case. In the year 2003, a case had been instituted for the murder of the husband of Manju Devi, i.e., Shambhu Ram in which he and his family members were accused. He stated that the Appellant Ajay Kuer had enmity with the two deceased but he could not give any paper in its regard. He further conceded that there was an incident on 26.01.2003 in which one Ram Lagan Sahni had sustained injuries in which all the four brothers had gone to jail and his gun was seized. In the year 2006, he had lost election to the Appellant Ganga Sahni and his entire family is accused in the present case. In the year 2011, he had lost election to the daughter-in-law of Ganga Sahni.

7. P.W.2 Shyam Kumar Singh alias Shambhu Singh is also the brother of the deceased Pappu Singh, who stated that on the date of occurrence while he alongwith his family was chatting , all the accused variously armed came and the Appellant Ganga Sahni ordered them to kill the deceased Pappu Singh and Pawan Singh, who tried to save by hiding in the house of Sanjeevan Ram but they were shot at by the accused including the present Appellants, who then pulled out their dead bodies and kept the same upon the dead body of each other. He explained the specific allegation against each of the accused persons.

In cross examination, he stated that before the occurrence,

the Appellant Ajay Kuer had threatened him on 20.07.2008 but he did not inform anyone. He tried to show his ignorance about his brother or sister-in-law having contested the Mukhiya election and said that before the said date, there was no previous enmity between them. It was suggested to him that the accused persons had been falsely implicated in this case on account of political rivalry.

8. P.W.8 Most. Champa Devi has stated that while they were sitting around, the accused persons including the present Appellants variously armed came and on hearing the order of the Appellant Ganga Sahni, the two deceased hid themselves in the hut of Sanjeevan Ram but they were killed by them and, thereafter, their dead bodies were dragged out. She stated that the two deceased had been chased for about 500 yards and in this period, she did not meet a single villager. She further stated that she herself had hidden in the house of Bhadai Ram alongwith her three sons and both the houses were adjacent to each other. She further stated that even since Mukhiya election, there was friction between both the parties.

When she was cross examined on behalf of the Appellant Ajay Kuer, she stated that he had not participated in the occurrence. She further stated that she did not identify the Appellant Ramashish Sahni in the dock.

9. P.W.9 Deepak Kumar Singh, the Informant, supported

the Fardbbeyan and that 19-20 persons including the present Appellants surrounded the deceased and, thereafter, chased them and shot at them in the house of Sanjeevan Ram whereas they had hid themselves in the house of Bhadai Ram from where they saw the occurrence. He described the exact manner of occurrence in which each of the accused had shot at the two deceased as also that the accused, thereafter, fled away with the motorcycle of Pawan Kumar Singh.

In cross examination, he stated that the Appellant Ajay Kuer was his co-villager and he was not involved in the murder of his brother, i.e., Pappu Singh and cousin brother, Pawan Kumar Singh.

It is to be noted that this witness has named altogether 13 persons as accused, namely, Ganga Sahni, Shambhu Sahni, Dhananjay Sahni, Daroga Sahni, Sanjay Sahni, Pramod Sahni, Ram Babu Sahni, Raj Kumar Sahni, Mahesh Sahni, Nagina Sahni, Ram Balak Sahni, Sanjivan Ram, Jagan Ram in his evidence but he had named 19 persons including the present Appellants in the First Information Report.

In his further cross examination, he stated that the hut of Sanjeevan Ram and that of Bhadai Ram were adjacent to each other. He further stated that the police was informed by his brother Suresh Prasad Singh (P.W.1) and it had come at about 05.00-06.00 P.M.

whereas the occurrence had taken place at about 01.00 P.M.

However, that information appears to have been suppressed by the prosecution.

He denied the knowledge about the two deceased being accused in earlier cases. He answered to a query of the Court that he had named 19 persons in the First Information Report and in the protest petition but in court he had named only 14 persons. He asserted that Ram Balak Sahni, Satendra Sahni, Appellants Shailendra Sahni, Ajay Kuer, Ram Lagan Sahni, Ramashish Sahni had not participated in the occurrence.

He was asked to explain as to why he had falsely implicated the aforesaid six accused persons but he did not reply.

10. P.W.10 Dr. Sohan Prasad Choudhary performed the Post-Mortem Examination of the dead body of Pawan Singh and proved the Post-Mortem Examination Report as Ext.3. He found the following ante mortem injuries on his person.

- I. Wound of entry 1/4" diameter of upper part of right axilla on chest. There was no blackening, charring tattooing in and around the wound, but, margin have abraded color.
- II. Wound of exit 1/2" X 1/2" on right side back, near shoulder joint.
- III. Wound of entry 1/4" diameter on mid abdomen 3" above

umbilicus, there was no blackening, charring present in and around the wound but margin have abraded collar.

IV. Wound on exit $3/4''$ X $3/4''$ on mid back.

V. Wound of entry $1/2''$ X $1/2''$ size on right side of abdomen. $2''$ lateral to umbilicus. There was no blackening, charring, tattooing present in and around the wound.

VI. Wound of exit $1''$ X $3/4''$ right side of back $3''$ lateral to mid line.

VII. Wound of entry $1/2''$ X $1/2''$ on right size pelvic laterally. There was no blackening, charring.

VIII. Wound of exit $1''$ X $3/4''$ on left side pelvic, laterally.

IX. Wound of entry $3/4''$ X $3/4''$ size of back of neck. There was blackening, charring present in and around the wound. On dissection all the internal organs were found pale including brain.

The chest and abdominal cavity was full of blood. There was fracture on rib on right side, with laceration of lung. There was fracture of lumber, vertebra with laceration of kidney. There was laceration of intestine. Both chamber of heart was empty. Stomach contains semi digested food. Bladder was empty. No bullets were recovered from the body.

Time elapsed since death-between 12 hours to 24 hours approximately.

Cause of death-shock and hemorrhage.

Nature of weapon-firearm such as rifle.

He further held Post-Mortem Examination of the deceased Pappu Singh. He proves the Post-Mortem Examination Report as Ext3/1. He found the following ante mortem injuries on his person:

- I. Lacerated black, charring wound of size 4" X 4" on right hand damson side wall fracture of carpal bone.
- II. Wound of entry 1/4" diameter on left wrist joint (laterally) (damson side). There was no charring, blackening or tattooing in and around the wound but, margin have abraded collar.
- III. Wound of exit 1/2" X 1/2" size at left wrist joint.
- IV. Wound of entry 1/4" diameter on upper part of neck below, occipital. There was no blackening or charring present but margin abraded collar.
- V. Wound of exit 1/2" X 1/2" on right parietal. There was fracture of right parietal bone.
- VI. Wound of entry 1/4" diameter on left side to abdomen near umbilicus. There was no

blackening, charring and tattooing in an around wound but margin wound abraded collar.

VII. Wound of exit 1/2" X 1/2" on back left side near mid line T.12 vertebra.

VIII. Wound of entry 1/4" diameter on left side of pelvise (laterally). There was no blackening, charring or tattooing in and around the neck, but margin have abraded collar.

IX. Wound of exit 1/2" X 1/2" on left side of buttock (medially).

On dissection-all the anterior organs were found pale. There was massive haemorrhage of blood n abdominal cavity and chronicle cavity. Two metallic pieces of firearm was recovered from the body which was handed over to accompanying constable. Stomach contains semi digestive food. Intestine contains gas and faces, bladder empty.

Time elapsed since death-between 12 hours to 24 hours approximately.

Cause of death-hemorrhage and shock due to above mentioned injuries caused by firearm weapon.

11. P.W.11 Ramesh Dubey, a Police Officer, stated that

there was an application filed for correcting the names in the Post-Mortem Examination Report and it was quite possible that error may have occurrence on account of slip of pen.

12. P.W.12 Vinay Kumar Singh, the Investigating Officer stated that on 27.07.2008, he received information that two persons had been killed at the door of Sanjeevan Ram in village-Chakki Sohagpur so he went there for inquiry. He then recorded the Fardbeyan of the Informant Deepak Kumar Singh (P.W.9), the signature of which he proves as Ext.1/1 and his own signature as Ext.1/2 and the Fardbeyan as Ext.1. He further prepared the Inquest Reports, which are Exts.2/4 and 2/5 and he further proves his endorsement on the Fardbeyan as Ext.1/3. He proves the formal First Information Report as Est.4. Thereafter, he inspected the place of occurrence, which was the hut of Sanjeevan Ram, adjacent to which was the thatched hut of Bhadai Ram. He then recorded the statements of the other witnesses as also arrested the accused.

In cross examination, he stated that he had received information on phone but no names had been disclosed as also stated that none of the prominent Panchayat Members appeared before him even though he attempted to record their statement. He did not seize any articles from the place of occurrence nor did he mention about the presence of the blood in the case diary. He stated that even though he

had not seized any articles, he stated that he had found the signs of the occurrence having been committed in the house of Sanjeevan Ram.

13. On behalf of the defence, we find that the accused Ajay Kuer, Sipahi Ram, Sanjeevan Ram, Rambabu Sahni, Sanjay Sahni, Jagan Ram, Shailendra Ram and Daroga Sahni have examined themselves as defence witness and pleaded that on account of political rivalry , they had been falsely implicated. They explained that earlier there had been a dispute between them on account of incident of flag hoisting in which the Informant and his brothers had been arrayed as accused. It was, thereafter, the village had been divided in two groups and they have been implicated in this case without any fault on their part. The rest of the witnesses are also on the point of alibi of the Appellants Ajay Kuer and others. Specific plea has been taken by the Appellant Ajay Kuer that he had gone to Gangadham on the date of occurrence alongwith the rest of the family and they have also been examined as defence witness.

14. On going through the evidence adduced on behalf of the prosecution, we find that in the First Information Report, the Informant has given a description as to how each of the accused persons had fired at the two deceased and on what part of their body. However, the eye-witness account is evidently false since it is his own story that the two deceased had been shot dead inside the house of

Sanjeevan Ram whereas he was hiding in the adjacent hutment of Bhadai Ram. Similar is the statement of the rest of the eye-witnesses, i.e., Suresh Prasad, Shyam Kumar Singh, Most. Champa Devi. In such circumstance, their eye witness account has to be doubly scrutinized.

We further find that even though the Informant has named 19 persons in the First Information Report but, subsequently, in Court he picked and chose amongst them. He categorically stated that six accused persons had not participated in the occurrence. His mother, P.W.8., Most. Champa Devi has also specifically stated that the Appellant Ajay Kuer named in the First Information Report had not participated in the occurrence. In such view of the matter, where the witnesses have chosen to tell lies in regard to one or six accused persons, it would be highly unsafe to rely on their testimony with regard to the remaining accused.

We further find that it was only the family members of the deceased Pappu Singh, who have been examined in the present case. Not a single independent witness has come forward to support the prosecution case even though the occurrence is said to have taken place in the middle of the afternoon and in full public view the two deceased were chased to a certain distance.

The fact of P.W.1 and his brothers being accused in a case

instituted by the accused persons is also admitted by them. It is also admitted that there was political rivalry between the parties and whereas the Appellant Ganga Sahni had won the election he himself and his daughter-in-law had lost the same, In such circumstances, we hold that placing reliance on such shaky evidence would be highly unsafe in a serious case like the instant one.

15. In the result, these Appeals are allowed. The Judgment of conviction and Order of sentence passed against the Appellants, above named, are set aside. They are acquitted of the charges. The Appellants are in jail custody, therefore, they are directed to be released forthwith, if not wanted in any other case.

(Anjana Prakash, J)

(Rajendra Kumar Mishra, J)

A.B. Bhardwaj/Pradeep Srivastava.

AFR/NAFR	
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