

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.572 of 2013

Arising Out of PS.Case No. -298 Year- 2001 Thana -NAWADA District- NAWADA

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Pintoo Mahto S/o Late Brij Mahto @ Late Brinandan Mahto, Resident of Village-
Mahabat, P.S.- Ariari, District- Sheikhpura

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Akhileshwar Prasad Singh, Sr. Adv.
Mr. Amrit Anunay

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

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CORAM: HONOURABLE JUSTICE SMT. ANJANA PRAKASH

and

HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA

ORAL JUDGMENT

(Per: HONOURABLE JUSTICE SMT. ANJANA PRAKASH)

Date: 15-03-2016

Heard learned counsel for the Appellant and
learned counsel appearing on behalf of the Additional Public
Prosecutor.

2. The above Appellant has been convicted under
Sections 302/149, 307/149, 148, 120(B) of the I.P.C. and
sentenced to undergo rigorous imprisonment under section
302/149 of the I.P.C. for life and fine of Rs. 5,000/-, in default
of which, three months further rigorous imprisonment, offence
under Section 307/149 of the I.P.C. 10 years Rigorous
Imprisonment as also for the offence under section 148 of the
I.P.C., three years and for the offence under section 120(B) of

the I.P.C. two years Rigorous Imprisonment vide Judgment dated 11.06.2013 passed by Additional Sessions Judge (Ad hoc)-Vth, Nawadah in Sessions Trial No. 201 of 2008/62 of 2012 arising out of Nawada P.S. Case No. 298 of 2001.

3. The case of the prosecution, according to Lalan Prasad (P.W. 7), the Warden, Nawada Mandal Kara, recorded on 23.12.2001, is that on the same day in the morning, some visitors had come to meet the under trials Achhat Singh and Ashok Mahto and were in the process of giving them some fruits and sweets. A request was made to Amrendra Kumar (P.W.5), Senior Warden, that the visitors be permitted to meet the under trials for two minutes. Acceding to the request, the main door was unlocked by Amrendra Kumar (P.W. 5). Just when Constable Shashi Bhushan Sharma was opening the gate on the instruction of Amrendra Kumar (P.W. 5), Achhat Singh assaulted him, on account of which he fell down and became unconscious outside the main gate. Then Achhat Singh and Ashok Mahto with fire arms came out from the gate along with the Appellant and 3-4 more named under trials and started to flee. However, the informant attempted to stop them by firing but he himself was injured in the transaction and his arms as also magazine were looted away by

the accused persons. The accused persons fled away in a Car which was waiting nearby, even though they were attempted to stopped by persons, who were gathered there with brick batting. He alleged that on account of assault, Shashi Bhushan Sharma lost his life.

4. During trial, the prosecution examined 13 witnesses. P.W. 1, Laxman Prasad, P.W. 2, Suresh Prasad and P.W. 9, Ram Nath Prasad, have been declared hostile.

5. P.W. 3, Chandradeo Ram, who was posted at Nawada Jail on the date of occurrence stated that 7-8 under trials had fled away but he did not know as to who had murdered Shashi Bhushan Sharma. He identified the Appellant as one of the under trial persons, who had fled away.

In cross-examination, he stated that he did not know as to in how many cases the Appellant was an accused.

6. P.W.4, Manoj Kumar Singh, was the Jail Superintendent at the relevant time and he was informed about the occurrence that some eight under trials had run away and the Gate Warden, Shashi Bhushan Sharma had been killed and two other Sepoy had sustained fire arm injuries. He remembered the name of one of whom Lalan Prasad (P.W. 7). Out of the eight persons, who ran away, he remembered the

name of the present Appellant as also the others and identified the present Appellant.

In cross-examination, he conceded that he had not seen the occurrence but had been informed about the same. He could not give the exact date of judicial remands of the Appellant.

7. P.W. 5, Amrendra Kumar, the Gate Warden, stated that on 23.12.2001 some visitors had come to meet the Jail inmates and just then he heard *hulla* and under trials started to flee. He was also injured in the transaction. Later on, he learnt that the under trials namely Achhat Singh, Rupesh Kumar, Ashok Mahto, Appellant and others had fled. He did not remember the names of others, who had fled away. However, he claimed to identify the present Appellant in Court.

There is nothing notable in his cross-examination.

8. P.W. 6, Manoj Kumar Singh, is a formal witness only on the point of submission of chargesheet.

9. P.W. 7, Lalan Prasad, the Informant, stated that on the date of occurrence, when he was on duty at the outside of the Jail Gate, some persons came from outside and started to fire on the Constables but he did not remember the

names. In the firing, eight under trials fled away, including the Appellant. In this transaction, Shashi Bhushan Sharma was also shot dead. He himself was injured at which he was removed to the Hospital, where he gave the *fardbeyan*, which is marked as Exhibit-1.

In cross-examination, he stated that people from outside started firing, on account of which he was injured, but he did not fall unconscious. When he reached the Hospital, he had learnt from Parsuram Chaudhary as to who had fled away and he had given the said names in the *fardbeyan*. Parsuram Chaudhary has not been examined. He did not remember as to in which case the present Appellant was in judicial remand.

10. P.W. 8, Ramesh Prasad, is a hearsay witness and was an Assistant Jailor. On the relevant time, he was at his residence. He had learnt that Lalan Prasad (P.W. 7) had been injured in the transaction, whereas Shashi Bhushan Sharma had been shot dead and he had seen the Jail Gate open. When he asked Lalan Prasad (P.W. 7), he stated that the Appellant and some other named under trials had run away. He identified Pintoo Mahto, as one of the under trials, who had run away.

In cross-examination, he stated that he did not see the occurrence as is evident from the Examination-in-

Chief. He had only come to the Jail premises on information.

11. P.W. 10, Binod Kumar, is the Investigating Officer. He stated that on 23.12.2001, when he was posted in Town Police Station, Nawadah, he assumed investigation of the instant case and inspected the place of occurrence, which was Nawadah District Jail. The main gate was made of iron and was about 20 feet wide and 14 feet high. There was a small gate attached to the main gate, which had a locking system. Thereafter, there was another entry gate after about 30 feet. He found a lot of blood in front of the main gate. He found the dead body of Shashi Bhushan Sharma, of which he prepared the Inquest. On the west was 125 feet road, which went towards Nawadah. He found a lot of blood trickling to a distance. He was told that Lalan Prasad (P.W.7) had been injured inside the Jail Gate. He also found the empty cartridges and fruits scattered at the place of occurrence. He examined the persons locked in the Jail and also recorded the statement of the Informant. He confirmed that the Appellant Pintoo Mahto was in the jail in connection with Warisaliganj P.S. Case No. 85 of 2000, Kashichak P.S. Case No. 14 of 2000 and Kachak P.S. Case No. 39 of 2000 of which he made a note in the case diary.



In cross-examination, he stated that he did not verify the judicial records in relation to the custody of the Appellant Pintoo Mahto nor did he verify the Jail Register with regard to attendance of the under trials on the date of occurrence and before the same. The Jail Superintendent had not produced any document in front of him to show the Appellant was under trial on the date of occurrence.

However, since the Investigating Officer had already taken note to the effect that the Appellant was in custody in three cases on the said date, such a minor lapse is condoned.

12. P.W. 11, Dhanusdhari Prasad Yadav, was also a person posted in the Jail on the date of occurrence and he stated that he along with Lalan Yadav, Constable, (P.W. 7) was on duty between 9.00 am. to 12.00 Noon and one Constable, Amrendra Kumar (P.W.5) was also on duty on the same date. When the visitors started arriving, about 8 to 10 persons from outside started firing. Since there was no boundary of the jail, persons used to enter the jail. In the said firing, Shashi Bhushan Singh was killed and Lalan Yadav (P.W.7) was injured from whose custody, the rifle was snatched away. When he started to come to the Jail Gate, the

outsider put a Carbine on him and eight under trials fled away. He was not injured. Out of the persons, who run away, he names Ashok Mahto, Achhat Singh, Dilip Ram and Ranjeet Thakur, but he does not name the Appellant.

However, since this fact is not denied and asserted by other witnesses, we are inclined to ignore the same.

13. P.W. 12, Radha Mohan Singh, was also posted in Nawada District Jail on the date of occurrence but he was not on duty. He heard *hulla* and sound of firing from the Jail Gate but did not go to the Jail Gate. Eight persons, including the present Appellant ran away from the Jail and Shashi Bhushan Sharma lost his life, whereas Lalan Prasad, (P.W. 5) was injured. He said that he could identify the persons, who had run away but failed to identify the present Appellant as one of them.

Since this witness was not a witness to the occurrence, evidently his not identifying the Appellant has no meaning.

14. P.W. 13, Madan Mohan Singh, Advocate Clerk, proved the Postmortem Examination Report as Exhibit-2 with objection.

15. It has been argued on behalf of the Appellant



that there is no evidence that the Appellant had nexus with the rest of the accused persons, who had caused the death of the deceased. There is no overt complicity at all. The further submission is that if at all, the Appellant can be booked only for the offence falling under Section 223 I.P.C. and no more and he has remained in custody for about 9 years i.e. much more than he can be sentenced.

16. In order to consider the aforesaid submission, we would like to state that the consistent story of the prosecution is that some visitors on the pretext of giving fruits and sweets to the under trials engineered an escape. The remains of the fruits etc. were found at the place of occurrence, thus, partly corroborating the manner of the occurrence. Further case of the prosecution is that as soon as Shashi Bhushan Sharma was assaulted by one of the under trials, seven of them fled away while some continued to fire. There is clear indication that some outsiders had conspired and facilitated escape of the Appellant, in course of which Shashi Bhushan Sharma, a Jail Constable, was killed and the informant injured.

17. Hence, in the manner, stated above, we find that the intrinsic case of the prosecution appears that in

furtherance of the common object and conspiracy Shashi Bhushan Sharma was killed and escape managed. The fact that there was indiscriminate firing with sophisticated weapons reveals the clear intent of the accused.

18. Under such circumstances, it is difficult for this Court to extract one part of the occurrence from the other and pin down the Appellant only to the extent of convicting him under Section 223 of the I.P.C. The case as a whole has been well proved against him and therefore, there is no scope of interference.

19. In the result, the Appeal is dismissed.

(Anjana Prakash, J.)

(Rajendra Kumar Mishra, J.)

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