

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.979 of 2012

Arising Out of PS.Case No. -188 Year- 2003 Thana -null District- BHABHUA (KAIMUR)

Kashi Ram Sah, S/o Sitaram, R/o Village - Mokari, P.S. - Bhabhua, Distt. - Kaimur
at Bhabhua

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

with

Criminal Appeal (DB) No. 893 of 2012

Arising Out of PS.Case No. -188 Year- 2003 Thana -null District- BHABHUA (KAIMUR)

Ramsakhi Bind, S/o Godhan Bind, R/o Vill. Nauvajhoti, P.S. Bhabua, District –
Kaimur at Bhatua.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

Appearance :

For the Appellant/s : Mr. Ragendra Narayan, Sr. Adv.
Mr. Rajni Kant Pandey, Adv.
Mr. Pramod Pandey, Adv.

For the Respondent/s : Mr. A.K. Sinha, A.P.P. (Cr. Appeal No.979/12)
Mr. S.N. Prasad, A.P.P.(Cr. Appeal No.893/12)

CORAM: HONOURABLE JUSTICE SMT. ANJANA PRAKASH

and

HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA

ORAL JUDGMENT

(Per: HONOURABLE JUSTICE SMT. ANJANA PRAKASH)

Date: 31-03-2016

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

2. Both the above Appellants have been
convicted under section 302/34 I.P.C. and sentenced to undergo



Rigorous Imprisonment for life and fine of Rs. 15,000/-, in default of which, further three years Simple Imprisonment, whereas Appellant Kashi Ram has also been convicted under section 27 of the Arms Act and sentenced to undergo Rigorous Imprisonment for four years by Adhoc Additional Sessions Judge-II, Kaimur at Bhahua vide Judgment and Order of conviction dated 14/23.08.2012 in connection with Sessions Case No. 266 of 2004/161 of 2010 arising out Bhabhua P.S. Case No. 188 of 2003.

3. The case of the prosecution, according to Nagendra Ram (P.W. 4) is that on 17.06.2003, while he was traveling with his brother, the deceased, Bagedu Ram on a bus, which was over packed, the accused persons numbering 5, 3 of whom are acquitted, entered the bus and when the bus reached a certain destination, on the orders of Appellant Ramsakhi Bind, Appellant Kashi Ram shot at him on the neck, on account of which he fell down dead in the bus itself. He stated that the motive was that his brother, the deceased, and he himself had acted as Panches in Village Mokari, Mahabir Asthan, in a private dispute, in which they had decided against the accused persons, for which he was threatened. A proceeding under Section 107 was also initiated. The *fardbeyan* was recorded soon thereafter at

the village itself in the presence of one Bikhari Ram (P.W. 1).

4. During trial, the prosecution examined 10 witnesses, out of whom, P.W. 1 Bhikhari Ram is a formal and only on the point of appending his signature on the *fardbeyan*, which was on a blank paper. P.W. 2 Srikant Ram, P.W. 3 Bhanu Ram and P.W. 7, Rajendra Ram have been declared hostile. P.W. 8 Changur Ram is a formal witness on the point of Inquest, whereas P.W. 9 Kedar Ram is also a formal on the point of proving the First Information Report. P.W. 10 Prabhawati Devi, the wife of the deceased has also been turned hostile but she is on the point of the factum of occurrence having been committed by the present Appellants. We shall discuss her evidence later. P.W.4 Nagendra Ram, is the Informant and P.W. 5 Ramesh Ram is his brother and both of them had deposed as eye witnesses.

5. To deal with the eye-witness account of P.W. 5, Ramesh Ram, firstly we would like to point out that he is not named in the First Information Report, as one of the persons, who was traveling with his brother, the Informant and deceased, nor the informant stated about his presence in his evidence in Court. In such circumstances, even though he stated that on the date of occurrence he was along with the deceased and informant on the bus and had seen the accused persons numbering 5 also boarding



it and thereafter surrounding the deceased, Appellant Kashi Ram shot at him on the orders of Appellant Ramsakhi Bind we do not place any reliance on him on his evidence. Had he been present on the bus there was no reason of exclusion of his presence in the First Information Report or the evidence of the informant in Court. We find it was also suggested to him that in fact, the deceased was killed by unknown persons and he had not witnessed the occurrence.

6. P.W. 4 Nagendar Ram, the Informant, has reiterated his version of the First Information Report and stated that on the fateful day, he was traveling along with deceased on the bus when the five accused persons boarded the same from a certain distance. Thereafter, when the bus reached village Mokari Mahavir Asthan, the Appellant Ramsakhi Bind ordered the Appellant Kashi Ram to shot him at which he did so on and he fell down dead. He also stated that a number of persons came on *hulla* including Vijay Ram, Doma Ram, Babulal Ram and others, but none of them have been examined. He stated that he had identified the accused since the bus was lit up from inside.

7. The reasons for the occurrence was cited as enmity on account of the alleged murder of the brother of the Appellant Kashi Ram i.e. Ramji Ram at his in-laws house and



whose wife Prabhawati Devi had named the deceased. He further stated that the daughter of Mahendra Ram, namely, Vidya Devi had been molested by the son of acquitted accused Ram Bilash Bind, for which a Panchayati was held and his deceased brother had acted as a main Panch and ruled against Bhanu Ram, the son of acquitted accused Ram Bilash Bind so Ram Bilash Bind was enraged at this ruling and a fight had taken place, in which transaction the deceased brother had been seriously injured. Another reason was that the daughter of Hira Ram, namely, Asha Devi had come back from her matrimonial home and had married accused Ramsakhi Bind and they had attended the last rites of Hira Ram, which was opposed by his brother and others on account of which they were upset.

He further stated that the bus came to his door and dropped the dead body and he proves signature on the *fardbeyan*, which was marked as Exhibit ½.

8. In cross examination, he clarified that his brother, the deceased, was not the Mukhiya or Surpanch but merely a Panch and the deceased had married P.W.10, Prabhawati Devi, wife of the brother of Appellant Kashi Ram in the Court and there was no previous case on account of it. In fact, he himself was on good terms with his sister-in-law who had not

re-married after the death of his brother. They had four children and they managed the property of the deceased brother. He further stated that no effort was made to attack his brother on the way when the accused had boarded the bus, till such time as they reached Mahabir Temple, which was located in their village itself. He also stated that earlier there was no enmity with the accused persons and much earlier a case had been instituted in between Appellant Kashi Ram and the deceased but what happened in the said case, he did not know.

9. P.W. 6, Dr. Kaushal Kishore Prasad conducted the Postmortem and found following injuries on the person of the deceased :

External Injuries :

(i) An irregular auricular lacerated wound at left just 1 cm. to mid line of 2/3 cm. in diameter margin tattooed marked charred 6" obliquely neck tissue deep to left lower postural process of back of left external ear communicated to injury no.2nd – it was wound of entrance.

ii) An irregularly circular and oral lacerated wound margin obverted posterior to left neck of obliquely depth of 6" and it was communicating to

injury no. 1. It was wound of exit.

On dissection – Skull bone intact. Brain, meninges and blood vessels looked pale. Hyoid, bone, bone of Larynx lower-upper tracheal carotids entry and via completely lacerated. Lower portion and left mastoid from a bone behind left external ear fractured and lacerated blood and serum oozing out and clotted blood found in the passage of wound. Lower trachea and broactus contained blood. Esophagus contained blood. Chest cavity – both pleura and lungs looked place. Pericardium and heart looked pale. Both side chamber found empty and front blood vessels found collapsed.

10. On going through the evidence of the witnesses, we find some disturbing factors in the case. Firstly, even though in the First Information Report, the Informant had stated that he himself as well as the deceased were Panches in a Panchayati, which ruled against the accused persons but it is surprising that no effort was made to kill the Informant and only the deceased was targeted. We also find that even while saying that earlier there was no enmity between the parties, the

Informant has cited three motives for the cause of occurrence, none of which appears plausible.

11. The most clinching evidence, which has persuaded this Court to acquit the Appellants in the evidence of P.W. 10 Prabhawati Devi, wife of the deceased, who stated that she was not at the place where her husband was shot and she along with his two brothers namely, P.W. 4 Nagendra Ram and P.W. 5 Ramesh Ram had left together on hearing of it. Under these circumstances, evidently the eye-witness account of the Informant is not reliable. We also find it difficult to believe that even though the accused persons traveled together with the Informant and deceased to quite a distance, it was only when they reached the village that they shot at him. Moreover, none of the occupants of the bus, which was heavily crowded, have been examined to prove the manner and the place of occurrence.

12. The Informant has also not explained in the *fardbeyan* as to how the dead body reached his house from the bus where the *fardbeyan* was recorded. In Court, he has tried to explain it but it is not satisfactory. The Investigating Officer was also for some reason not examined, which further creates a doubt about the veracity of the prosecution case.

13. For the aforesaid reasons, we allow the

Appeals. The Judgment of conviction and Order of sentence dated 14/23.08.2012 passed by the Adhoc Additional Sessions Judge-II, Kaimur at Bhahua in connection with Sessions Case No. 266 of 2004/161 of 2010 arising out Bhabhua P.S. Case No. 188 of 2003 is hereby set aside. They are acquitted of the charges. The Appellant, Kashi Ram Sah, who is in jail custody, is directed to be released forthwith, if not wanted in any other case. So far as Appellant Ramsakhi Bind is concerned, he is on bail, therefore, he is discharged from the liabilities of his bail bonds.

(Anjana Prakash, J.)

(Rajendra Kumar Mishra, J.)

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