

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.19 of 2016

Arising Out of PS.Case No. -30 Year- 2008 Thana -SASARAM MUFFSIL District- SASARAM (ROHTAS)

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Shobha Devi Wife of Rajesh Singh Resident of Village- Rampur, P.S Sasaram (M), District Rohtas.

.... Appellant/s

Versus

1. The State of Bihar.
2. Vijay Singh Son of late Uma Singh
3. Loha Singh son of Lallu Singh
4. Manu Singh Son of Loha Singh
5. Ram Singh son of Narendra Singh
6. Binod Singh Son of Bhukhan Singh
7. Tudi Singh Son of Chhota Singh
8. Birendra Singh son of Suryadeo Singh
- All are resident of Village: Rampur, P.S Sasaram (M), District Rohtas.
9. Bidai Singh son of Shridhari Singh
10. Dinesh Singh son of Yogendra Singh
- Both Residents of Village: Nirmalpur, Ps.: Sasaram(M), District Rohtas.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Bikram Dev Kumar
For the State : Mr. Z.Hoda(App)

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE

and

HONOURABLE JUSTICE SMT. ANJANA MISHRA

ORAL ORDER

(Per: HONOURABLE JUSTICE SMT. ANJANA MISHRA)

4 30-03-2016 The present appeal is directed against the judgment and order, dated 08.07.2015, passed by Shri Vijay Kumar Pandey, Adhoc Additional Session Judge III, Rohtas, in Sessions Trail No. 170 of 2010, by which the learned trial Judge has acquitted respondent Nos. 2 to 10 of the charges under Sections 435, 436 and 395 of the Indian Penal Code, upon giving them the benefits of doubt.

2. The aforementioned judgment arose out of a trial, which

came as a sequel to the occurrence, allegedly committed on 17.01.2008, which led to the filing of an First Information Report bearing Sasaram (M) P.S. Case No. 30 of 2008, lodged by one Shobha Devi, who has narrated the occurrence in the following manner:-

- I. It has been stated that on 17.01.2008, she, along with her sister-in-law (*Gotni*), Pinki Devi, and three other children were inside her house;
- II. At about 8:00 A.M., she heard the sound of firing and also *hulla*, whereupon she, along with others, after closing her room, went to the roof of the house;
- III. It was further alleged by her that she learnt that her co-villager, Bhola Singh, had been killed. Thereafter, she, along with her family members, again, heard the sound of firing;
- IV. She further stated that thereafter, the Police came, but were turned out of the village on account of the protest of the villagers, who had gathered in thousands and had been brick-batting the police;
- V. The villagers, subsequently, surrounded the house of the informant and from the crowd, she identified Vijay Singh and Loha Singh, who had come with

fifty unknown villagers and lit the tractor parked inside her campus;

VI. They further set afire the *Khalihan* of Vishun Singh, Lalan Singh and Dadan Singh;

VII. She further stated that Vijay Singh, Loha Singh and others entered the house of the informant and started abusing and took away the ornaments and lit fire to the house and looted other valuable articles;

VIII. The informant claims to have identified eight persons, who had been named in the First Information and are the present respondent Nos. 2 to 10 herein.

IX. On the basis of the aforesaid information, Sasaram (M) P.S. Case No. 30 of 2008, dated 18.01.2008, was registered under Sections 435/436 and 395/34 of the Indian Penal Code.

3. The Police, upon investigation, submitted the *charge-sheet* against Respondent Nos. 2 to 10 and, thereafter, cognizance of the offences were taken and the case was committed to the Court of Sessions on 13.12.2007. Charges, under Sections 435, 436 and 395 of the Indian Penal Code, were framed against them.

4. In order to prove its case, the prosecution examined five witnesses in all, namely, P.W. 1 Deep Narain Singh, P.W. 2

Bimlesh Singh @ Bimlesh Yadav P.W. 3 Pinky Devi P.W. 4 Shobha Devi (informant) and P.W. 5 Binay Kumar Singh, Investigating Officer of the case.

Out of the aforementioned witnesses P.W. 1 and P.W. 2 turned hostile P.W. 3 and P.W. 4 claimed to be eye witnesses and P.W. 5 is the Investigating Officer of the case.

5. The prosecution also placed certain documents as Exhibits. Exhibit 1 is the written statement of the informant, Exhibit 2 is charge-sheet. Exhibit 2/1 is the signature of Deep Narain Paswan upon charge-sheet. Exhibit-3 is the proof of case diary from paragraph No. 1 to 83. Exhibit 4 is the formal First Information Report.

6. The accused were examined under Section 313 of the Code of Criminal Procedure and they have made a clear denial of the occurrence and they have also produced certain documents, which are as follows:-

Exhibit 'A'- certified copy of the Sasaram (M) P.S. Case No. 29 of 2008.

Exhibit 'B'- charge sheet of Sasaram (M) P.S. Case No. 29 of 2008.

Exhibit 'C'-is the certified copy of the judgment of S.T. No. 77 of 2009.

Exhibit 'D'- is the certified copy of the order in S.T. No. 171 of 2010.

7. At the trial, P.W. 1 and P.W. 2, namely, Deep Narain Singh and Bimlesh Singh @ Bimlesh Yadav, has stated before the Court that they had no knowledge about the occurrence and cannot recognize the accused. P.W.2 has also stated that he was not examined by the police. Thus, both the witnesses have been declared hostile on the prayer made by the prosecution.

8. There are two eye witnesses of the occurrence, namely, Pinki Devi (P.W. 3), who is a family witness and was present in the house of the informant and supported the case of prosecution and corroborated the evidence of P.W. 4, the informant.

9. As discussed by the learned trial Court, it appears that P.W. 3 (Pinki Devi) has stated that the occurrence took place at 01:30 hours in the day time, when she was with her *Gotni* at home. She had heard that at about 08:00 hours in the morning, one Bhola Singh had been murdered and some suspected villagers had been arrested by the police. However, the villagers became belligerent and started pelting stones at the police due to which the police released the guilty persons. Thereafter, at about 01:30 hours, about fifty persons, namely, Vijay Singh, Loha Singh, Birendra

Singh, Tudi Singh, Manu Singh, Dinesh Yadav, Nishant Singh, Ram Singh, Vijay Singh and Bidai Singh, came and set the Mahindra tractor and Marshal jeep on fire. They also entered the house forcibly and broke open the almirah and looted jewellery and other items from the house. They also set the house on fire. She has further stated that the tractor of Vishnudeo Singh and Dadan Singh was also set on fire, whereafter they fled away. However, she stated that when the police came to take her statement, she had claimed to identify the accused persons, but in her cross examination, she stated that some of the accused persons were from outside the village, whereas she was unable to state, who had murdered Bhola Singh. She also stated that Dinesh Yadav and Bidai were residents of Amartalab, whereas other accused persons were also from outside the village. She stated that Vishnudeo Singh was in jail, but she had no concern with him. She further stated that at the time of murder of Bhola Singh, police came and took away the dead-body and also stated that none of the accused persons were connected with Bhola Singh, though she spoke about pelting of stones and firing. She also stated that when all the accused persons reached there, the main door of the house was closed. She also stated that there was a Durga Temple, located in the same campus as her house, which had been

constructed by her father-in-law, but further stated that neither she nor her family members had any relations with the murder of Bhola Singh. The defence contradicted the statement of this witness stating that she was concealing facts as accused Birendra Singh and Gupteshwar were *Gotias* of the witness and were in custody. The Durga Temple was, in fact, located on Government land and the villagers had been objecting to the construction of boundary of the temple, which led to the filing of the present case against the villagers.

10. P.W. 4 is the informant, who has also stated that at about 08:00 A.M., when she was with her *Gotni* at the roof of the house, the firing started and she came to know that Bhola Singh had been murdered. When the police came, they were made to return by the villagers, who started pelting stones at them. Again, at 01:30 P.M., police came and arrested some persons, but they were, again, attacked by the villagers, who also used firearms. After the police retreated, around fifty villagers came and, on being exhorted by accused Loha Singh and Vijay Singh, started looting articles of the informant from his house. They also burnt a Mahindra tractor, Marshall jeep and bundles of paddy crops kept in the campus. P.W. 4 (the informant) has named Loha Singh, Vijay Singh, Nishant Singh, Ram Singh, Binod Singh, Tudi Singh,

Birendra Singh, Bidai Singh, Dinesh Yadav and some others, whom she could not identify. She claims to be knowing these persons from before. She further stated that thereafter, her *Gotni* sent message to her brother Dharmendra, who came and accompanied her to the police Station, where her bother wrote the First Information Report and she signed on the same.

11. P.W. 5 (Vijay Kumar Singh), the Investigating Officer of the case, has deposed that he had taken up the investigation of the case on 23.11.2008 and, upon direction of S.D.P.O., submitted the charge-sheet against the accused persons showing one Loha Singh as absconder. The Investigating Officer (P.W. 5) has deposed that though he had seen the house of Mohan Singh, he is unable to state whether the temple is situated on Government land or on the Khatiyani land of Mohan Singh. He fails to remember whether there was any murder on the said date at village Rampur, leave alone name the person, who had been murdered. He stated that he had inspected the place of occurrence, but had not the seen the burnt tractor or the Marshal jeep on the date of occurrence. He even did not record the statement of any witness. There was also no evidence of any looting at the place of occurrence and not a single chit of paper was filed by the prosecution to corroborate the fact of looting or plundering the

informant's house. Thus, the Investigating Officer has failed to support the prosecution version.

12. It is, thus, apparent from above discussions that the Investigating Officer has completely demolished the case of the prosecution for the reason that the factum of burning of Mahindra tractor and Marshal jeep has been negated, which clearly disproves the prosecution version. Further-more, no independent witness has come before the Court to support the prosecution's version. The theory of looting of the house of the informant also does not find substance and credence. The witnesses, who had come before the Investigating Officer at the time of occurrence, have not turned up, in the Court, to support the prosecution version.

13. On the contrary, in order to disprove the prosecution case, the defence had filed Exhibits A, B, C and D. Exhibit A is the certified copy of the First Information Report of Sasaram (M) P.S. Case No. 29 of 2008 and Exhibit B is the charge-sheet of the said case, which clearly go to show that the occurrence of murder of Bholu Singh happened, at 07:00 A.M., on 17.01.2008, in village Rampur, P.S. Sasaram (M), District Rohtas, wherein *charge-sheet* was submitted against Vishnudeo Singh and others. The present case arises out of Sasaram Muffasil P.S. Case No. 30 of 2008 with



regard to an occurrence having taken place at 01:30 P.M., in village Rampur, P.S. Sasaram, which led to Session Trial No. 170 of 2010 in this case, it is clear that there was commotion in the village after the death of Bhola Singh. Another, trial bearing Sessions Trial No. 77 of 2009, arising out of Sasaram Muffasil P.S. Case No. 118 of 2008 registered upon the direction of Court under Section 156 (3) of the Code of Criminal Procedure relates to the occurrence, dated 17.01.2008. Further Sessions Trial No. 171 of 2010, arising out of Sasaram (M) P.S. Case No. 31 of 2008, relates to the occurrence which took place on the same date at village Rampur at 04:00 P.M. The defence, thus, submitted that several cases were lodged on behalf of Vishunudeo Singh and his party members to save themselves from the murder case of Bhola Singh and the present case is also one such case of false implication.

14. Having heard learned Counsel for the appellant and on perusal of the evidence adduced by the respective parties and the documents produced by the defence, it transpires that the learned trial Court has sifted the entire evidence before coming to any conclusion. There are serious discrepancies in the evidence, of the informant and the eye witness P.W.3, who is an interested witness, being a part of the family. The Investigating Officer has

not stated or corroborated the story of these two eye witnesses regarding the occurrence of burning of Mahindra tractor and Marshal jeep. The informant has also not produced any co-villager/independent witness to corroborate the story of looting and burning of the house. Further-more, the defence has come up with several First Information Reports, instituted by the prosecution party, giving different versions at different times of occurrence of the same date, thus, placing the entire prosecution story under a cloud. In a nutshell, the prosecution has failed to prove beyond reasonable doubt the allegations against the accused persons and, therefore, the learned trial Court, having carefully analyzed the evidence, has acquitted the accused persons of the charges levelled against them under Sections 435, 436 and 395 of the Indian Penal Code after extending to them the “benefit of doubt”.

15. Thus, we find no infirmity in the judgment and as such the appeal fails.

16. The appeal is accordingly dismissed.

(I.A. Ansari, ACJ)

(Anjana Mishra, J)

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