

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.936 of 2014

Arising Out of PS.Case No. -122 Year- 1987 Thana -CHANDI District- NALANDA
(BIHARSHARIFF)

Nagina Paswan S/o Bechan Paswan Resident of Village - Lattipur, Police Station -
Nagarnausa, District - Nalanda

The State of Bihar

Versus

.... Appellant/s

.... Respondent/s

---with---

Criminal Appeal (DB) No. 652 of 2002

Anil Kumar Choudhary @ Rajendra Choudhary, S/o Siya Sharan Choudhary, R/o
Vill. Bhobhi, P.S. Nagarnausa, (Chandi) District – Nalanda.

The State of Bihar

Versus

.... Appellant/s

.... Respondent/s

---with---

Criminal Appeal (DB) No. 670 of 2002

Dhuri Ram, S/o late Rameshar Ram, R/o Vill. Bhobhi, P.S. Nagarnausa, District –
Nalanda.

The State of Bihar

Versus

.... Appellant/s

.... Respondent/s

Appearance :

(In CR. APP (DB) No.936 of 2014)
For the Appellant/s : Mr. Ajay Mukherjee
For the Respondent/s : Mr. A.K. Sinha, A.P.P.
(In CR. APP (DB) No.652 of 2002)
For the Appellant/s : Mr. Sanjay Kumar
For the Respondent/s : Mr. A.K. Sinha, A.P.P.
(In CR. APP (DB) No.670 of 2002)
For the Appellant/s : Mr. Pramod Kumar
For the Respondent/s : Mr. S.C. Mishra, 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: 06-05-2016

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

2. All the above Appellants have been convicted under section 396 I.P.C. and sentenced to undergo Rigorous Imprisonment for life by the Additional District and Sessions Judge-III/Presiding Officer, Additional Court No.1, Nalanda at Biharsharif in connection with Sessions Trial No. 94 of 1988/186 of 2001 arising out of Chandi P.S. Case No. 122 of 1987.

3. The case of the Informant Rakesh Mahto is that on the evening of 22.05.1987 some dacoits came to his house and started to demand his Gun. He stated that he would bring it and he ran towards the house of the Mukhiya. In the meanwhile, the deceased Mangar Ram, who was going home to eat stated that he had been identified so the dacoits shot him dead. He picked up his rifle from the house of the Mukhiya and going towards south of the village started firing at which the dacoits ran away. When he came back, he saw Kapileo Prasad (P.W. 3) had sustained injury and when he asked the deceased



Mangar Ram he stated that he had identified the Appellant Dhuri Ram, son of Ramehshwar Ram and Appellant Rajendra Choudhary @ Anil Kumar Choudhary, son of Siya Sharan Choudhary. When he entered inside his house, he saw his daughter Sarbila Kumar and Neelam Kumari as also his daughter-in-law (Sumitra Devi P.W.7) injured. They took the injured Mangar Ram to Hilsa Hospital for treatment but on the way, he died. So they returned home. When he returned home Manohar Ram, Kapil Mahto (P.W. 3) and Sarwan disclosed the names of 8 accused persons. His son Om Prakash (P.W. 2) disclosed the names of three persons namely Lakhan Mahto, Ram Swaroop Mahto, Rameshwar Ram and Balchand Paswan. It appears that all the accused persons belonged to either the same or the neighbouring villages.

4. During trial, the prosecution examined 9 witnesses. P.W. 1 Ganauri Ram is the son of the deceased. He stated that on hearing sound of firing, he went to the place of occurrence and saw his father injured. On asking by the informant P.W. 5 Manik Chand Ram, his father disclosed the names of Appellants Anil Kumar Choudhary @ Rajendra Choudhary and Dhuri Ram.

In cross-examination, he explained that all the

villagers are close by and how there was consistent interaction between the villagers of the accused as well as theirs.

5. P.W. 2 Om Prakash is the son of the Informant who supported the fact of 5-7 dacoits having come to their house and having demanded the rifle at which his father said he would bring it so getting an opportunity, he locked himself inside the house and from the window, he saw 9 accused persons including Appellant Nagina Paswan. He further stated that he had seen at the deceased Mangar Ram having sustained a bullet injury and when his father (Informant) asked him, he disclosed the names of Appellants Dhuri Ram and Anil Kumar Choudhary @ Rajendra Chaudhary.

It appears that the Appellants Rajendra Choudhary and Dhuri Ram belong to village Bhobhi, which was adjacent to their village.

6. P.W. 3 Kapildeo Prasad had not supported the case of the prosecution and had been declared hostile.

7. P.W. 4 Satyendra Prasad, son of the Informant Ramkeshwar Mahto whose named in the First Information Report also supports the fact of the dacoity having been committed dacoity in the house while his father had gone to bring the gun and he identified 9 persons. However, he did not

name any of the present Appellants. He also did not mention about the deceased having given a dying declaration and disclosing the names of Appellants Dhuri Ram and Rajendra Chaudhary.

8. P.W. 5 Manik Chand Ram is the inmate of the house of the informant who supports the factum of dacoity but he also did not identify anyone, even though from the admission of the witnesses, it appears that the accused persons were well known to all of them belonging to the surrounding villages.

9. P.W. 6 Sumitra is the wife of the Informant, who also supports the factum of the occurrence, but had not disclosed any names.

10. P.W. 7 Sunita Devi is the daughter-in-law of the Informant who supports that unknown dacoits had committed dacoity in their house as also she had seen the deceased Mangar Ram injured near the door. She did not claim to identify the accused persons in the Dock.

Importantly, she does not mention about the factum of oral dying declaration on which basis conviction of the Appellants Dhuri and Rajendra Chaudhary has been based.

11. P.W. 8 Ramkeshwar Mahto is the Informant who stated that at about 7:30 pm. on 22.05.1987, 5-7 accused

persons came asking for his gun. He identified 5 of them including Appellant Nagina Paswan. After having committed dacoity, they all fled away. When he reached home, he saw his family members injured and heard Mangar Ram having disclosed the name of the Appellants Dhuri Ram and Rajendra Choudhary. He stated that his sons Satendra Prasad P.W. 4 had disclosed the names of 8 persons. None of whom are Appellants before this Court.

In cross-examination, he stated that village of the Appellants Rajendra Choudhary and Dhuri Ram was about 200 yards away and there were many relations residing in the village Bhubhi. He also stated that the Mukhiya was his own brother and the inter se relationship between the villagers of the surrounding village and that of those residing in his village.

12. P.W. 9 is the Doctor, who found following injuries on the person of the deceased :

- i. Multiple Pellet wound of 1/8" diameter in the right thigh (upper part) about 2" diameter area. Skin was blackened and charred.*
- ii. Multiple pellet wound of 1/8" in diameter was present in the right dorsem of the palm. Skin was blackened and charred.*

***On Dissection :** Large vessels in the right side of thigh were ruptured and three pellet was clogged in pelvis bone which were taken out from right palm. Both lungs were pale. Both hearts were empty. Bladder empty, Large intestine filled with gas and fecal matter. Stomach empty.*

He proves the Postmortem Examination Report as Exhibit-2.

13. On behalf of the Defence, Krishna Paswan was examined as D.W 1 who stated that he had given information to Bhabhi Police Station of which some of the present Appellants were also residents and it appears from his statement that at the earliest instance, when he was told to inform the Police Station, no names had been disclosed. He also proves Station Diary Entry to demonstrate this fact.

14. To a Court query, he explained that on the date of occurrence when as a Chowkidar he went to gather informant Rakesh Mahto who told him that the deceased Mangar Ram had been killed in course of dacoity and had not disclosed any names nor that he had identified any one.

15. From the evidence of the aforesaid witnesses, we find that the complicity of the Appellants Anil Kumar

Choudhary @ Rajendra Chaudhary and Dhuri Ram are by way of oral dying declaration of the deceased. However, importantly, neither P.W. 4 Satendra Prasad, son of the Informant nor P.W. 5 Manik Chand Ram, an independent witness, who was also an inmate of the house of the Informant, has mentioned about the factum of the oral dying declaration. In such circumstances, we think that this sole material against them is not worth reliance and they deserve to be given benefit of doubt.

16. As for Appellant Nagina Paswan, we find that he was a co-villager of the Informant and named in the First Information Report. However, his complicity is not supported by his own son Om Prakash (P.W. 2) and Satendra Prasad (P.W. 4), who do not name him. Moreover, it is highly unlikely that a co-villager would commit an act of dacoity without concealing his identity.

17. In such circumstances, we are inclined to acquit the Appellants giving them benefit of doubt. Thus, the Appeals are allowed. The Judgment of conviction dated 13.11.2014/13.09.2002 and Order of sentence dated 18.11.2014/13.09.2002 passed by the Additional District and Sessions Judge-III/Presiding Officer, Additional Court No.1, Nalanda at Biharsharif respectively in connection with Sessions

Trial No. 94 of 1988/186 of 2001 arising out of Chandi P.S. Case No. 122 of 1987 are set aside. They are acquitted of the charges. The Appellant Nagina Paswan (Cr. Appeal (DB) No. 936 of 2014) is in jail custody. Therefore, he is directed to be released forthwith, if not wanted in any other case. So far as the rest of the Appellants namely, Anil Kumar Choudhary @ Rajendra Choudhary and Dhuri Ram are concerned, they are on bail, therefore, they are discharged from the liabilities of their bail bonds.

(Anjana Prakash, J)

(Rajendra Kumar Mishra, J)

Shailendra/-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	