

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.1081 of 2013

Arising Out of PS.Case No. -1 Year- 1993 Thana -SHEKHPURA District- SEKHPURA

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Mahesh Dharhi @ Mahesh Dhari Son Of Late Lakhan Dhari Resident Of Village-
Bhadaushi, P.S. Korma, District- Sheikhpura.

.... Appellant/s

Versus

The State Of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Ambika Bhagat
Mr. Mayank Bilochan
Mr. Sudhir Kumar Singh
For the Respondent/s : Mr. S.N. Prasad, APP

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CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL

And

HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL)

Date: 18-04-2017

The sole appellant has filed the present appeal to assail the judgment of conviction dated 05.05.2003 passed by the Presiding Officer, Addl. Court (Fast Track) Munger, and order of sentence, dated 04.09.2013 passed by Sri Gyan Chandra Gupta, Adhoc A.D.J. - I, Sheikhpura in Sessions Case No. 202 of 1995 (arising out of Sheikhpura P.S. Case No. 1 of 1993) whereby he was sentenced to undergo R.I. for life under Section 302/149 IPC with fine having default clause in addition to his conviction and sentence under Section 148 IPC and sentence to undergo R.I. for 02 years.

2. In all, 60 accuseds were sent up for trial. During trial, 05 of them died. 03 accuseds namely Parshu Ram Dhadhi, Bulak Dhadhi and Lulha Dhadhi were declared absconders. Thus, only 52 accuseds



including the appellant faced the trial. On appraisal of the prosecution evidence, the learned Trial Court acquitted 34 accuseds of all the charges and convicted 18 of them including the present appellant. However, at the time of recording of sentence, the Court found from his appearance as juvenile and, as such, the imposition of sentence was deferred and an inquiry was directed to be made. Upon enquiry having been made in this regard, the appellant was not held as a juvenile in conflict with law. The appellant, it appears had absconded in the meanwhile. Steps were taken to secure his arrest. On his surrender, the learned Trial Court by an order dated 04.09.2013 sentenced him in the manner stated above.

3. The prosecution case presents an ugly look. In the fardbeyan lodged by Baleshwar Mahton (P.W.-18) and recorded by the Officer-in-charge of Korma Police Station on 2.1.1993 at 11 a.m. in the village in question, it is alleged that on the relevant date and time of occurrence, a mob of more than 150 accuseds armed with various weapons including fire arm attacked the village and ransacked many houses, assaulted many of the co-villagers in which 05 persons lost their lives and some of the villagers including P.W.-1 and P.W.-17 received injuries. On recording of the fardbeyan, a formal F.I.R. (Ext.-6) was drawn up and the investigation ensued in which death inquest proceedings of all the 05 deceaseds were drawn and the bodies were sent for post mortem examination. On conclusion of



investigation, the investigating agency filed the charge-sheet against 60 accused persons. After commitment, the case came on the file of learned Trial Judge who framed the charges and explained to the accuseds. They abjured their guilt and claimed to be tried.

4. To bring home the guilt of the accuseds, the prosecution examined altogether 20 witnesses and exhibited few documents. P.W.-1 to P.W.-7, P.W.-11, P.W.-12, P.W.-13, P.W.-17 and P.W.-18 are the prosecution witnesses who have narrated the prosecution case. P.W.-8 (Dr. Dharam Nath Choudhary), P.W.-9 (Dr. Mehilal Singh), P.W.-10 (Dr. Birendra Prasad Gupta), P.W.-14 (Dr. Kameshwar Prasad Sinha) and P.W.-15 (Dr. Rakesh Kumar Sinha) are the autopsy surgeons who held post mortem on the dead bodies of deceaseds Sukhdeo Mahton, Nischal Mahton, Bideshi Mahton, Chetlal Mahton and Mittan Mahton. The post mortem reports of these deceaseds are Exts. 1 to 1/4. P.W.-16 (Dr. Rajendra Prasad Jaiswal) had examined four injureds and proved their injury report as Ext.-2 to 2/3. P.W.-19 is a formal witness who has proved the inquest reports of all the five deceaseds carried by the investigating officer. They are marked as Exts. 5 to 5/4. P.W.-20 is the Officer-in-charge who recorded the fardbeyan and prepared the inquest reports. He has also proved the formal F.I.R. Later he made over investigation to another police officer namely Sri H.N. Singh. As the officer who took over the investigation and on conclusion thereof, submitted the charge-sheet.



As he had died, his evidence could not be recorded. P.W.- 20 proved the relevant paragraphs (para 1 to 66) of the case diary as Ext.7.

5. On analyzing the evidence, the learned Trial Court found 14 of the accuseds including the appellant guilty of the charge and held them guilty under Section 302/149 IPC and Section 148 IPC. Some of the accuseds (not the appellant) were also held guilty on different counts.

6. As noticed above, the appellant along with other co-accuseds was held guilty of the charge(s) on 05.05.2003, the other convicts were sentenced on 19.5.2003. However, the imposition of the sentence on the appellant was deferred until inquiry to ascertain whether the appellant was child/juvenile on the date of occurrence.

7. In the enquiry, the appellant was not held juvenile in conflict with law. On his surrender, the learned Trial Judge took up his case for imposition of sentence and under order dated 04.09.2013 sentenced him to undergo R.I. for life and imposition of fine with default clause under Section 302/149 IPC and R.I. for two years under Section 148 IPC. Aggrieved thereby, the present appeal has been filed.

8. It may also be pointed out that while the case of the appellant remained pending for imposition of appropriate, several other convicts filed appeals before this Court vide Cr. Appeal (DB) Nos. 243 of 2003, 294 of 2003 and 592 of 2005. In the first appeal,



there were 11 appellants namely whereas Cr. Appeal (DB) No. 243 of 2003 was filed by Lakhan Dhadhi @ Dhari, Bachchu Dhadhi @ Dhari, Ramanand Dhadhi @ Dhari and Upendra Dhadhi @ Dhari. Similarly, Cr. Appeal (DB) No. 592 of 2005 was filed by Parshu Ram Dhadhi @ Dhari. All the three appeals were heard analogously and by a common judgment dated 21st October, 2011, all of them were acquitted. The judgment rendered in those three appeals is enclosed as Annexure-1 to the Memo of appeal. A Division Bench of this Court while acquitting those appellants, in paragraphs 51 and 52 of the judgment held as under:-

“In the present case, non-lodging of F.I.R. by the family members of the injured or the deceased, non-examination of the independent witnesses, non-examination of the Investigating Officer leading to non-proving the place of occurrence and claim of eye witnesses to have seen the occurrence from different rooms/places, delay in lodging the F.I.R., examination of eye witnesses under Section 161 of the Code of Criminal Procedure after several days and inimical relationship between the parties, particularly, when few days prior to the occurrence some persons were killed, by the informant's side create reasonable doubt over the entire prosecution case. Hence, considering the entire facts and circumstances of the case, as discussed above, we are of the view that the prosecution has failed to prove the case beyond the shadow of all reasonable doubts. Accordingly, the appellants deserve to be acquitted.

52. In the result, the judgments of conviction and order of sentence passed in Sessions Case No. 202 of 1995/T.R. No. 209 of 2002 by Presiding Officer, Additional Court (Fast Track), Munger and in Sessions Case No. 202A of 1995/T.R. No. 257 of 2005 by Additional Sessions Judge, Fast Track Court, Sheikhpura are set aside. Appellants of all the three appeals are acquitted. Appellants Ramanand Dhari (Dhadhi) and Upendra Dhari (Dhadhi) of Cr. Appeal



(DB) No. 294 of 2003, who are in custody are directed to be released forthwith, if not wanted in any other case and other appellants are discharged from the liabilities of the respective bail bonds.”

9. Mr. Bhagat appearing in support of the appeal has submitted that the appellant has been adjudged, on appraisal of evidence, by the Trial Court as a member of the mob. In an effort to demonstrate that the case of the appellant stands on better footing than those appellants who have been acquitted by this Court, he has drawn our attention to the finding of the learned Trial Court in paragraph 157 of the judgment which, for better appreciation, is extracted hereinbelow:

“157. The following accused persons have been identified by four P.Ws.

(i) Ranglal Dhari has been identified by Daso Mahton P.W.5. Sankar Mahton P.W.7, Kamaldeo Mahton alias Kamo Mahton P.W.11 and Ramashray Mahton P.W.12.

(ii) Accused Mahesh Dhari has been identified by Ram Mahton P.W.1 Haricharn Mahton P.W.2 Saran Mahton P.W.4 and Lalkishun Mahton P.W.5.

(iii) Loha Dhari has been identified by Ram Mahton P.W.1 Haricharan Mahton P.W.2 Daso Mahton P.W.5 and Lalkishun Mahton P.W.17.”

10. It appears that the learned Trial Court, inadvertently, in the said part of the judgment recorded Lal Kishun Mahton as P.W.-5 in place of P.W.-17. On the basis of aforesaid, it has been urged before us that the appellant herein also deserves to be acquitted on the reasonings and findings recorded by this Court in the aforesaid 03 cognate appeals.



11. We may note the Trial Court in paragraph 156 of the judgment, on analyzing the evidence, found that co-convict Awadhesh Dhari was identified amongst the accuseds by 05 P.Ws besides suffering also an allegation of assault on one of the deceaseds namely Saran Mahton. Awadhesh Dhari is one of the appellants in Cr.Appeal (DB) No. 243 of 2003. On these facts, it has been urged before us that the case of the appellant stands on better footing than many of the co-accuseds who have been held guilty by the learned Trial Court and acquitted by this Court.

12. From the judgment rendered in the three cognate appeals, particularly, the finding of the Division Bench in paragraph 51 of the judgment extracted above, it is evident, the ground on which the prosecution case was structured was not found proved. Accordingly, those appellants were acquitted. The Counsel for the State has conceded to this effect. In the circumstances, we find substance in the contention of the appellant that the case of the appellant of the present appeal stands on better footing and his appeal be decided on the reasonings and findings of this Court recorded in those appeals. .

13. In *Bijoy Singh and Anr. Vs. The State of Bihar* since reported in (2002) 9 SCC 147, the Hon'ble Supreme Court in paragraph 12 laid down the following legal principle:-

“12.This Court has set up a judicial precedent that where on evaluation of the case if the court reaches the conclusion that no conviction of



any accused is possible, the benefit of that decision must be extended to the co-accused, similarly situated, though he has not challenged the order by way of an appeal.”

14. Learned APP appearing for the State, on perusal of the relevant evidence, has not disputed the aforesaid contention of the appellant with regard to his complicity in the case transpiring through evidence of these P.Ws. He has, however, pointed out that the informant (P.W.-18) had named all the 58 accuseds besides two unknown in the fardbeyan.

15. Under the aforesaid circumstances, the appeal is allowed. The judgment of conviction dated 05.05.2003 passed by Sri Paras Nath Sinha, Presiding Officer, Addl. Court (Fast Track) Munger, and order of sentence, dated 04.09.2013 passed by Sri Gyan Chandra Gupta, Adhoc A.D.J. -I Sheikhpura in Sessions Case No. 202 of 1995 (arising out of Sheikhpura P.S. Case No. 1 of 1993) is set aside. Let the appellant namely Mahesh Dharhi @ Mahesh Dhari, who is stated to be in custody, be released forthwith from custody, if not required in any other case.

(Kishore Kumar Mandal, J)

(Sanjay Kumar, J)

Pankaj/-

AFR/NAFR	NAFR
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