

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No. 257 of 1993

Arising out of P.S. Case No. 174 year 1990 Thana Sikandra District Jamui

Naresh Mandal, son of Late Lakhan Mandal, resident of village Konan, P.S. Sikandara, District Jamui

.... Appellant

Versus

State of Bihar

.... Respondent

with

Criminal Appeal (DB) No. 297 of 1993

Arising out of P.S. Case No. 174 year 1990 Thana Sikandra District Jamui

- 1. Khelawan Mandal, son of Late Bhago Mandal
 - 2. Bharat Mandal, son of Ganesh Mandal
 - 3. Hareram Mandal, son of Narayan Mandal
 - 4. Parmanand Mandal, son of Yogi Mnadal
 - 5. Ram Bilas Mandal, son of late Moti Mandal
 - 6. Nawal Mandal, son of Lakhan Mandal
- All residents of village Konan, P.S. Sikandara, Dist. Jamui

.... Appellants

Versus

State of Bihar

.... Respondent

Appearance:

(In CR. APP (DB) No. 257 of 1993)

For the Appellant : Mr. Surendra Kumar Singh, Sr. Advocate
Mr. Praveen Prakash, Advocate
Mr. Bharat Lal, Advocate

For the State : Mr. Ajay Mishra, APP

(In CR. APP (DB) No. 297 of 1993)

For the Appellants : Mr. Surendra Kumar Singh, Sr. Advocate
Mr. Praveen Prakash, Advocate
Mr. Bharat Lal, Advocate

For the State : Mr. Satya Narayan Prasad, APP

CORAM: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH
and
HONOURABLE MR. JUSTICE VIKASH JAIN
ORAL JUDGMENT



(Per: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH)

Date: 13-01-2017

Heard learned counsel for the appellants and learned Additional Public Prosecutors for the State.

2. The two appeals arise from the judgment and order of conviction and sentence dated 17.05.1993 and 18.05.1993 passed in Sessions Case No. 148 of 1992 (Trial No. 12 of 1992) being the judgment of the Ist Additional District and Sessions Judge, Jamui whereby the appellant Nawal Mandal has been found guilty of the offence under Section 302 of the Indian Penal Code along with Section 27 of the Arms Act. Naresh Mandal and Ram Bilash Mandal have also held guilty of offence punishable under Section 302 of the Indian Penal Code. Hareram Mandal, Khelawan Mandal, Bharat Mandal and Parmanand Mandal are held guilty of offences punishable under Section 302 read with Section 34 of the of the Indian Penal Code. They all have been sentenced to life imprisonment.

3. The prosecution in order to establish its case and the guilt of the appellants in all examined 12 witnesses, out of whom PW 1 Ramashish Singh, PW 2 Nawal Kishore Singh, PW 3 Ram Chariter Singh, PW 4 Sunil Kumar Pandey and PW 10 Randhir Kumar Singh (informant) are said to be eye witnesses. Sunil Kumar Pandey, PW4 is said to have been accompanying the deceased on the scooter when the murderous assault took place on the deceased. PW 10 Randhir Kumar Singh is the brother of the deceased and is the informant. PW 5 Ranbir



Kumar Singh, PW 6 Amerika Ram, PW 7 Md. Hasis, PW 8 Md. Ala Uddin, @ Alo Mian and PW 9 Soudagar Sao have come to the place of occurrence after the incident and they are not eye witnesses. PW 11 Dr. Arun Kumar Singh is the Civil Assistant Surgeon, Sub-divisional Hospital, Jamui, who conducted the post mortem and PW 12 Deo Narayan Singh is the Sub Inspector of Police who investigated the case and submitted charge sheet.

4. The prosecution case is that the deceased Rana Ranjeet Singh who was a resident of village Konan had gone out of the village on his scooter taking along with him the PW 4 Sunil Kumar Pandey and was expected to return shortly in the day itself. Night having fallen and he having not returned his brother Randhir Kumar Singh PW 10 along with the alleged eye witnesses PW 1, 2 and 3 went out of the village at about 6.45 p.m. on 22.10.1990. They saw the dim light of a scooter approaching. When they were about 25 yards away they found that about eight persons stopped the scooter and surrounded it. In the torch light of the informant PW 10 and in the light of the scooter it is alleged that they saw that the appellant Naresh Mandal cut the neck of the deceased, Nawal Mandal fired at the head of the deceased at close range and appellant Ram Bilas Mandal brutally stabbed the deceased. When they shouted the accused persons ran away. All the accused persons and all the witnesses including the deceased are of the same village Konan in the district of Jamui. The incident having taken place



information was sent to Sikandra Police Station, which is about 15 kilometers away, the police came at about 10.00 p.m. The fardbeyan of PW 10 was recorded and is witnessed by PW 4 Sunil Kumar Pandey and PW 2 Nawal Kishore Singh. Deo Narayan Singh, Sub Inspector of Police takes up the investigation and the fardbeyan is taken back to the Police Station and at 3.00 a.m. formal FIR is registered by the Officer-in-Charge of the Police Station, who was also present, but has not been examined. Thereafter, inquest is prepared at 7.00 a.m. the next morning. After investigation charge sheet is submitted and after taking cognizance the case being submitted to the Court of Sessions, the trial took place and ultimately the Ist Additional District & Sessions Judge, Jamui passed the aforesaid judgment and sentence.

5. Learned counsel for the appellants submits that upon appraisal of the evidence as a whole it would appear that the five eye witnesses as sought to be projected are in fact no eye witnesses. In fact there is no witness to the crime. It is merely because of past enmity the appellants have been named. We have been taken to the evidence and we have perused the records. In our view the submission has to be accepted and the prosecution version cannot be taken to be as gospel truth. The reasons are as follows :-

The first thing we would like to notice is that the Investigating Officer PW 12 Deo Narayan Singh was questioned and disclosed that the Police came to know about the incident on the basis of information



given by the village Chaukidar, which information he received at about 8.00 p.m. on the fateful day. A sanha entry was made in the station diary in this regard and thereafter the Officer-in-Charge went to the place of occurrence reaching there at about 10.00 p.m. Neither the Chaukidar has been examined nor he is cited as a charge sheet witness, nor is the sanha produced or approved in the Court. It is the admission of the Investigating Officer, PW 12 that it is not even noted in the case diary. The defence makes an issue of this submitting that this was possibly the earliest version of the incident which has been deliberately withheld. Having not been brought as evidence in the Court and the Chaukidar not having been examined, an adverse inference has to be drawn as it has caused prejudice to the defence, inasmuch as the defence suggestion is that the deceased was waylaid and no one has seen the incident. It is subsequently that the fardbeyan was concocted and the appellants have been implicated. It is admitted by the persons claiming to be eye witnesses that they were involved in litigation and are facing trial in respect of an offence under Section 307 at the instance of appellant Naresh Mandal. Thus, the very first step raises doubts.

Then the Officer-in-charge who recorded the fardbeyan and who registered the case is not shown as a charge sheet witness nor is he brought in the Court. He was the first police official on the site and he is the person who had assigned the investigation to the PW 12.



Undoubtedly, this has caused prejudice to the defence denying them a chance to get the truth of the matter as it had unfolded.

6. Learned counsel for the appellants states that it is not explained as to how the appellants were identified at about 6.45 p.m. on 22.10.1990 by when it is dark, because no means of identification was shown to the Investigating Officer as admitted by him in the Court nor any torch or source of light was produced as evidence in the Court. Moreover, the evidence of witnesses is consistent that they had come out of the village. They saw at some distance a scooter coming at a slow speed, it is in the light of the headlight of the scooter and the torch held by the informant from a distance of 25 yards they not only saw seven or eight appellants, they all with parrot like consistency give graphic details of the manner in which each person acts as it is seen from proximity. This is again quite doubtful. Even if they could have seen eight persons, it is difficult to have identified much less given the graphic details of the manner of the brutal attack on the deceased. Another question that remains unanswered is that if the informant was shining the torch and was able to identify the assailants who are also of the same village, the assailants normally would take steps to conceal their identity and escape without attacking the deceased. With the deceased on the scooter is PW 4 Sunil Kumar Pandey who is not of the village while eight people surrounded the two after seeing the manner in which the deceased is killed he escapes unhurt from the scene of



crime. This again creates a doubt about the correctness of the evidence.

7. PW 12 the Investigating Officer admits and even in the fardbeyan it is noted that the fardbeyan is recorded in Konan village, not at the place of occurrence. The defence suggestion is that the incident having taken place, information has been sent to the police. The Officer-in-charge of the Police Station and the Sub Inspector of Police, the Investigating Officer have come to the village from the place of occurrence. There the informant being the brother of the deceased and others after full deliberation drew a false case to implicate the appellants. They found PW 4 in the village had come there visiting his father-in-law and agreed to be a witness to the crime, as having accompanied the deceased. In his cross examination PW 4 accepts that he did not go to his father-in-law's village i.e. village Konan ever before. He by chance accompanied the deceased on way back to this village. He admits that after shoot out he managed to run away. Why the appellants did not try to stop him or kill him is not explained, if he was actually there.

8. What is more curious is that though he is not of the village and as per his own admission he has not been visiting it he knew the names and he knew the identity of all the assailants. These facts as a whole create a doubt upon the prosecution version.

9. We may note here that from the evidence of the Investigating Officer PW 12 it appears that he along with the Officer-in-



charge (who has not been examined and not even shown as a charge sheet witness) they got the information of the crime at about 8.30 p.m. and reached the place of occurrence at about 10.00 p.m. The fardbeyan was not recorded there but, they went to the village where the fardbeyan was then recorded, the informant being PW 4, Sunil Kumar Pandey and it was recorded by the Officer-in-charge himself. The Officer-in-charge then comes back to the Police Station and registered the fardbeyan as a formal First Information Report at 3.00 a.m. the next morning. It is noted that investigation has already been taken up by PW 12, but then the inquest is prepared only at 7.00 a.m. i. e. almost 12 hours after the incident and 9 hours after the police had reached the place of occurrence, meanwhile the investigation had already started and the First Information Report already registered. From the records it is apparent that the First Information Report having been registered on 23.10.1990 it is first seen by the Additional Chief Judicial Magistrate, Jamui on 26.10.1990, for which there are no explanations coming forthwith from the prosecution side. No doubt the learned APP is correct in submitting that unless questioned by the defence the prosecution is not required to explain, but fundamental facts which are on record do need explanation. In our view, the explanation must come whether asked for or not from the prosecution itself. The prosecution would otherwise run the risk of leaving the question unnecessarily leading to creation of doubt and consequential acquittal. Thus, it is the



responsibility of the prosecution to explain the unusual turn of events being sought to be proved by the prosecution. The defence merely has to show that the prosecution case is doubtful.

10. In view of the aforesaid, we find that there is enough material on the records to create doubt about the correctness of the case as set up by the prosecution and that being so, the trial Court has erred in holding that the prosecution has succeeded in bringing the case beyond reasonable doubts. We thus have no option but to allow these appeals and set aside the conviction and sentence of the appellants. The appellants are released from their bail bonds.

11. Let the lower Court records be returned to the Court below forthwith.

(Navaniti Prasad Singh, J)

(Vikash Jain, J)

Chandran

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