

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.347 of 1993

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Mahesh Mandal, son of Dharmi Mandal, resident of Village- Raghuni Tola)
P.S. Ismilpur (Gopalpur) District-Bhagalpur

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

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Criminal Appeal (DB) No. 348 of 1993

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1. Bhabhwan Mandal @ Bhusan Mandal @ Bhuban Mandal @ Bhagwan Mandal, resident of village- Sadhupur, P.S. Kahalgaon, District-Bhagalpur
2. Khantar Mandal, son of late Bhogal Mandal, resident of village- Sadhupur, P.S. Kahalgaon, District- Bhagalpur

... .. Appellant/s

Versus

State Of Bihar

... .. Respondent/s

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Criminal Appeal (DB) No. 357 of 1993

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1. Banarsi Mandal, son of Chedi Mandal, resident of Village- Naya Tola Athgama, P.S. Kahalgaon, District- Bhagalpur
2. Gendo Mandal alias Ganouri Mandal, resident of Village- Teghra, P.S. Sanhoula, District- Bhagalpur

... .. Appellant/s

Versus

State Of Bihar

... .. Respondent/s

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Criminal Appeal (DB) No. 377 of 1993

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1. Mahesh Mandal, son of Chulahai Mandal
2. Gajjo Mandal alias Jago Mandal, son of Daharmi Mandal
3. Arjun Mandal, son of Chulhai Mandal, all of village-Teghra, Police Station- Sonhoula, District-Bhagalpur.

... .. Appellant/s

Versus

State Of Bihar

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Shambhu Sharan Singh, Amicus curiae
For the Respondent/s	:	Mr. Dilip Kumar Sinha, APP
		Mr. Abhimanyu Sharma, APP
		Mr. S.N.Prasad, APP

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**CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)**

Date : 16-09-2017

All these four criminal Appeals arise out of the common judgment of conviction dated 11th June, 1993 and order of sentence dated 15.06.1993 passed by the 1st Additional Sessions Judge, Bhagalpur in Sessions Trial No. 429 of 1990/ 35 of 1992 (arising out of Ghogha O.O. (Kahalgaon) P.S. Case No. 250 of 1988/ G.R. Case No. 1427 of 1988) whereby the learned 1st Additional Sessions Judge, Bhagalpur convicted the appellant Banarsi Mandal, Gendo Mandal @ Ganauri Mandal, Gajjo Mandal @ Jago Mandal, Arjun Mandal, Bhasawan Mandal @ Bhusan Mandal, Mahesh Mandal son of Dharmi Mandal, Mahesh Mandal s/o Chulhai Mandal, Khantar Mandal and Nandu Yadav under Section 396 of the Indian Penal Code to undergo rigorous imprisonment for life and acquitted Kailash Mandal, Nandlal Sahni and Phulo Mandal.

2. Cr. Appeal No. 347 of 1993 was filed by Mahesh Mandal son of Dharmi Mandal. When the case was called out, counsel for the appellant informed that the appellant Mahesh Mandal has died during the pendency of the appeal.

3. Accordingly, Cr. Appeal No. 347 of 1993 is abated on account of death of the appellant Mahesh Mandal son of Dharmi Mandal.

4. The prosecution story is based on the Fardbeyan of one Vijay Kant Yadav, S/o Sri Prasad Yadav of village Sadhopur, P.S. Colgong, District- Bhagalpur recorded by the ASI of Colgong Police Station at 4.30 A.M. on



11.8.1988 that on 10.8.1988 at about 11 P.M. 120-150 people of 20 villages attacked the houses of informant's side, armed with deadly weapons and committed dacoity and murder. The informant has stated in his fardbeyan that while he was asleep in his house he woke up on unusual *hulla*, went upstairs along with his wife Rani, brother Sahdeo Yadav, cousin Surendra Yadav and Krishna Yadav and found that about 150 persons were marching towards their house from the direction of river in east. They were raising the slogan of '*Bajrang Bali Ki Jai*'. The informant stated that the miscreants attacked the houses with *sawal*, etc. At first the miscreants scaled over roof of Kamleshwari Yadav and started breaking open the house of Kamleshwari Yadav. They entered into the Angan and broke open the room of Sahdeo Yadav and committed his murder by means of dagger and fire arms. Sanjay Kumar Suman was killed on the verandah itself by means of dagger blows. The miscreants thereafter entered inside the room of Surendra Yadav and killed him by fire arms. Kamleshwari Yasdav sustained injury and fell down beneath the *kothi*. The miscreants gave him up considering him to be dead. Krishna Yadav was also assaulted and his properties were looted. The informant concealed himself inside his room where Nakul Yadav and Pankaj Yadav were already present. It is his further case that the miscreants broke open the room by means of *sawal* and started assaulting them. They were uttering the following words "*you have killed one Nakul but 100 Nakuls are still alive. You will be sent to the place where you sent Nakul to*". The miscreants assaulted all the three brothers, father and mother of the



informant after ransacking their houses. The miscreants went out to the other houses of the village. After two hours Kishori Yadav knocked the door of his room. The informant came out of the house, Damodar Yadav and Mahendra Yadav also came there and narrated to him that Bhubneshwar Yadav who was sleeping on the Baithaka has also been killed. They further narrated that dacoity was committed in the house of Kishori Yadav where Binod Yadav was killed Shashidhar Yadav was killed in the Angan of Saryug Yadav. Dacoity was also committed in the house of Gopal Yadav, Gajadhar Yadav, Nageshwar Yadav, Adhiklal Yadav and Wakil Yadav. The informant has identified 10 persons named in the FIR and other stated that villager of villages Athgama, Sahpur, Pakki Sarai, Amapur, Ekchari, Jamania, Babu tola, Rajandipur, Shankerpur, Bakiya, Ismailpur and Pipra, Bhata, Kamlakund Tintanga also participated in the occurrence. They were being looted by persons named in the FIR.

5. In the occurrence six persons died. The informant in his fardbeyan named 10 persons as involved in the commission of the rime. In the FIR itself it was stated that 150 persons allegedly of 20 villages have committed the crime in dead night.

6. The motive behind the crime as per the informant was that there was Gang rivalry between the Gangs of villages Sadhopur and Teghra and four days ahead the occurrence, people of Sadhopur village were convicted in the case of murder of Suresh Yadav of village Teghra in S.Tr. No. 12 of 1980 vide judgment dated 6.8.1988 and that is the reason the accused appellants have



attacked the village due to Gang rivalry. The specific case of the informant is that the appellants committed murder and dacoity to take revenge of killing of one Nakul.

7. In the instant case 13 witnesses claimed that they have seen the occurrences. They are -

P.W. 1 Ajay Kumar Yadav, P.W.2 Damodar Yadav, P.W.3 Brahamdeo Yadav, P.W. 5 Mahendra Yadav, P.W.7 Vakil Yadav, P.W.8 Gopal Yadav, P.W.9 Krishna Kant Yadav, P.,W.10 Sri Prasad Yadav, P.W. 12 Kameshwar Yadav, P.W. 13 Vijay Kant Yadav (the informant), P.W. 14 Manoj Kumar Yadav, P.W. 15Adhiklal Yadav, and P.W. 16 Sanjay Kumar Yadav.

8. From the fardbeyan it appears that the informant has named the following persons:-

1. Banarsi Mandal,
2. Kailash Mandal,
3. Gendo Mandal @ Ganauri Mandal,
4. Ganjo Mandal @ Gajio Mandal,
5. Arjun Mandal,
6. Gurmi Mandal,
7. Nage @ Nageshwar Mandal,
8. Bhasawan Mandal,
- 9, Dayal Mandal and
10. Chichu Mandal



9. However, out of the aforesaid 10 persons named by the informant, Nage @ Nageshwar Mandal, Dayal Mandal and Chichu Mandal were not sent up for trial as after investigation the police submitted charge sheet under Sections 147, 148, 149, 302, 307, 452, 326, 324, 323, 380 and 306 of the Indian Penal Code against 13 persons including Mahesh Mandal son of Chulhai Mandal, Nandu Yadav, Mahesh Mandal son of dharma Mandal, Shiv Mandal, Fullo Mandal, and Nandlal Mandal, who were not named in the FIR. In other words the informant, who claimed to have identified the miscreants/assailants who participated in the commission of crime, three out of ten were not even sent up for trial which indicates that the informant's case was not found to be true as to involvement of the aforesaid three accused namely, Nage @ Nageshwar Mandal, Dayal Mandal and Chichu Mandal and their implication was found to be false during the course of investigation.

10. The police after investigation, as stated above, submitted charge sheet and the case was thereafter committed to the court of sessions and charges were framed against 13 accused persons under Section 396 IPC.

11. The Trial Court on the basis of the evidence adduced by the prosecution convicted Banarsi Mandal, Arjun Mandal, Bhasawan Mandal @ Bhusan Mandal, Mahesh Mandal son of Dharmi Mandal, Mahesh Mandal son of Chulhai Mandal, Khantar Mandal and Nandu Yadav, as discussed above and acquitted Kailash Mandal, Nandlal Sahni and Phulo Mandal.



12. In the instant case no one was appearing on behalf of the appellants to assist the Court and as such the court appointed Mr. Shambhu Sharan Singh as Amicus Curiae to assist the Court in this batch of criminal appeals.

13. We have heard Mr. Shambhu Sharan Singh, Advocate on behalf of the appellants as Amicus Curiae and the counsel for the State and we have examined the materials on record, i.e. evidence of the witnesses. 13 witnesses on behalf of the prosecution have claimed that they have seen the occurrence. At the very outset it is relevant to mention here that the informant of the case named ten persons out of 150 in his fardbeyan that he has identified them, who have participated in the crime but his version was found to be false by the police during the course of investigation as out of ten named in the fardbeyan only seven persons have been sent up for trial and the police submitted charge sheet against 13 persons and only 9 were found to be guilty by the trial court. Thus, out of 13 accused, nine have been convicted and rest were acquitted by the trial court. The present case is admittedly the result of Gang rivalry between the peoples of two villages. The occurrence took place in the dead night and as per the prosecution version 150 persons allegedly participated belonging to 20 villages. Therefore, in a situation when there was a mob of 150 persons involved in the commission of such crime, it is very difficult to specifically identify the miscreants when everyone was involved, according to their own case, in saving their own lives.



14. Mr. Singh submitted that at the very first instance the claim of the prosecution party that they have identified the miscreants in the torch light flesh of the accused persons is difficult to eschew. He submitted that in a case where there is previous enmity and Gang rivalry, there is every possibility of false implication and as such, unless there is specific evidence and identity of the accused, the conviction is unsustainable.

15. He submitted that in the instant case the prosecution has not been able to bring home the charges beyond all reasonable doubt. He referred to the statement of P.W. 1 who claimed that he has seen the actual occurrence and he claimed to have identified Kailash Mandal, Gurmi Mandal, Ram Dayal Mandal, Chichu Mandal, Bhasawan Mandal, Mahesh Mandal, Arjun Mandal, Gajno Mandal, Banarsi Mandal in commission of murder of Surendra Yadav. He specifically named Banarsi, Nago, Gurmi, Dayal, Mahesh, Arjun and Chicho who were alleged to have been involved in commission of murder of deceased, Sahdeo Yadav, deceased Sanjay Kumar Suman but Nageshwar @ Nago was not even sent up for trial. In test identification parade he could only identify Mahesh Mandal and in Court he could identify only Banarsi Mandal, Basawan Mandal and Khantar Mandal but he could not identify Arjun Mandal and Gajo Mandal and therefore no reliance can be placed on his version that he has seen the occurrence and identified the miscreants who participated in the crime.



16. P.W.2, Damodar Yadav who claimed to have seen the occurrence and identified Kailash Mandal, Naresh Mandal, Jhakshu Mandal, Fulwa Mandal, Dashrath Mandal, Raju Mandal, Babulal Mandal, Gulha Mandal, Parsadi Mandal, Sautlal Mandal, Basant Lal Mandal, Sattan Mandal and Banarsi Mandal in torch light flesh but Kailash has been acquitted, Naresh and Jhakshu were not sent up for trial, Fulwa was acquitted, Dashrath, Raju, Babulal, Gulha, Parsadi, Sautlal, Basantlal, Sattan and Banarsi have not been sent up for trial. The fact that Naresh Mandal was not put on trial, Kailash acquitted, Sattan was not put on trial and further he could only identify Mahesh Mandal and Nandu Mandal in Test Identification Parade which renders the statement of P.W. 2 under serious clouds as to his claim of identifying the miscreants.

17. P.W.3 Brahamdeo Yadav, who claimed to be the eye witnesses and has claimed that he has identified Banarsi Mandal, Gurmi Mandal, Nageshwar Mandal, Bhasawan Mandal, dayal Mandal, Parsadi Mandal, Kailash Mandal, Gendo Mandal, Mahesh Mandal, Gajjo Mandal, Arjun Mandal, Jamadar Mandal, Naresh Mandal and Khantar Mandal but Gurmi Mandal, Nageshwar Mandal Dayal Mandal and Parsadi Mandal were not even sent up for trial and Kailash Mandal was acquitted, Jamadar Mandal and Naresh Mandal were not even put on trial, . Thus his deposition is also under serious cloud as he could not identify most of the persons whom he named and those he named were either not sent up for trial or acquitted by the trial court.



18. P.W.5 Mahendra Yadav claimed to have identified the dacoit in the torch light, namely, Banarsi Mandal, Kailash Mandal, Ganauri Mandal @ Gendo, Mahesh Mandal, Arjun Mandal, Jagu Mandal @ Gajjo Mandal, Jamadar Mandal, Gurmi Mandal, Nageshwar Mandal, Bhasawan Mandal, Dayal Mandal, Dhantar Mandal, Prayag Mandal, Mofil Mandal, Parsadi Mandal, Basant Mandal and Dashrath Mandal but Jamadar Mandal, Gurmi Mandal and Nageshwar Mandal, Dayal Mandal, Dhantar Mandal, Prayag Mandal, Mofil Mandal, Parshadi Mandal, Basant Mandal and Dashrath Mandal were not sent up for trial and in Test Identification Parade he could only identify Mahesh Mandal and Shiv Mandal and in the court he could only identify Mahesh Mandal.

19. P.W.7 Vakil Yadav claims to be the eye witness who has named many persons including Nageshwar Mandal, Damdam Mandal, Chicho Mandal and Jamadar Mandal who were not even put on trial and Kailash Mandal was even acquitted in the case.

Similar is the case of P.W. 8 Gopal Yadav who claims that he has seen stabbing of Shashidhar has also not identified the real culprit in the crime as he named many persons including Dayal Mandal, Makhan Mandal who were not even sent up for trial.

20. P.W. 9 Krishnakant Yadav who claimed to have identified the real culprits as eye witness of the crime but out of many persons he named as



miscreants Dayal, Chicho, Kodo Mandal, Khantar Mandal, Mofil Mandal were not even put on trial and Kailash Mandal was acquitted by the trial court.

21. P.W. 10 Sri Prasad Yadav claims to have seen the actual occurrence. He also claims to have identified many persons including Dayal Mandal, Chicho Mandal, Prayag Mandal but they were not even sent up for trial and Kailash Mandal has been acquitted. His version is not reliable for the reason that at the time of occurrence he was suffering from acute paralysis about last six months and was bed ridden and as such it is difficult to believe that in dead night he could see the actual crime scene and identify the real culprits.

22. P.W. 12 Kamleshwari Yadav also claimed to have identified many miscreants in torch light including Prayag Mandal who was not sent up for trial and Kailash Mandal has been acquitted.

23. P.W.13. Vijay Kant Yadav is the informant who claims to have seen the actual occurrence/crime committed by the appellants and others. He claimed to have identified Banarsi Mandal, Kodo Mandal, Dayal Mandal, Bhasawan Mandal, Nago @ Nageshwar Mandal, Gurmi Mandal, Chicho Mandal and Kailash Mandal. Chicho Mandal was not put on trial and Kailash Mandal has been acquitted. In court he has identified Banarsi Mandal, Gajjo Mandal, Arjun Mandal, Gendo, Bhasawan but he did not appear in Test Identification Parade for identification of the miscreants which shows that he was unable to identify the accused persons at that time.



24. P.W. 14 Manoj Kumar Yadav also claims to have seen the actual occurrence and identified the accused appellants and others in torch light including Kailash Mandal who has been acquitted and many persons to whom he has claimed to have identified were even not put on trial.

25. P.W.15 Adhi Lal Yadav also claims to have seen the occurrence but he has not identified any accused persons. He got knowledge about the accused persons in this case from his brother P.W. 7.

26. P.W.16 Sanjay Kumar Yadav, claimed to have seen the actual occurrence and named many persons including the appellants in torch light but he has stated in his statement in para-4 that he was not present at the time of murder of his father, Shashidhar Yadav.

27. In the instant case there is no independent witnesses who have been examined in support of the prosecution case although a large number of persons reside near the place of occurrence as the place of occurrence is the village.

28. Mr. Singh has submitted that it is very difficult to identify in dead night out of 150 persons' mob as to who have actually given blow and committed murder by using fire arms. Firstly, there is dead night, secondly there was a mob and thirdly there was commotion and further that there was Gang rivalry and due to the same false implication is probable. Referring to the deposition of so called eye witnesses to the occurrence he submitted that eye witnesses are at variance. They have named many persons in commission of



the crime but many of them were not even sent up for trial, some of them were acquitted by the trial court, their deposition cannot be taken as trustworthy as they are interested persons and their deposition is influenced by personal bias due to Gang rivalry. It is not safe to convict nine out of 150 persons involved in the commission of the crime. Even if the prosecution version is accepted as correct, there are contradictions and improbability in the prosecution case which renders the prosecution case doubtful.

29. Mr. Singh submitted that in a case where as per the prosecution case intention was to commit murder due to Gang rivalry, the story of dacoity was introduced with oblique motive and the manner in which the witnesses have claimed to have identified the accused-appellants in the commission of crime raises serious doubt about authenticity of their claim which is, in fact, evident from contradiction of the claim and actual state of affairs during the course of police investigation, test identification parade and identification of the accused in Court. It appears that everyone has named the accused involved in the crime, according to their own perception and not according to the actual involvement of the offenders in crime that is why there is difference in the account of the involvement of the accused persons in the commission of crime and major part of the version of the eye witnesses was found to be untrue and as such it is not safe to approve the conviction of the appellants rather the appellants deserve benefit of doubt on account of the contradiction in the version of the so called eye witnesses, improbability of prosecution case due to



difficulty of identification in dead night coupled with the background of Gang rivalry and chance of false implication to crown it all the fact that the witnesses have claimed that they have seen the miscreants, who committed the crime but their version was found to be untrue either during the course of investigation or in trial and as such the principle of *falsus uno and falsus omnibus* is applicable.

30. We have gone through the records of the case and we have analyzed the deposition of the witnesses in the instant case where a mob of 150 persons surrounded the village and committed the alleged crime in the village in the dead night. It is very difficult to identify in the dead night from one house to the actual incident occurring inside the another house which is the case in the instant case. In such a situation when the accounts of the so called eye witnesses were not found to be consistent and reliable. The conviction of the persons in such a situation is safe or not is the issue involved in this case.

31. In Cr. Appeal No. 348 of 1993 the appellant Bhashwan Mandal @ Bhusan Mandal and Khantar Mandal were granted bail after serving imprisonment for 10 years. In Cr. Appeal No. 357 of 1993, the appellant Banarsi Mandal was granted bail after nine years and appellant Gendo Mandal @ Ganouri Mandal was granted bail after more than nine years. In Cr. Appeal No. 377 of 1993, the appellant Mahesh Mandal, son of Chulhai Manda, Gajjo Mandal @ Jago Mandal and Arjun Mandal were granted bail on 3.5.1996.

32. Out of the 10 appellants in these four appeal, one has died, the trial court has convicted the appellants in the batch of criminal appeals on 11th



of June, 1993 i.e. 24 years back and the appellant Banarsi Mandal was 45 years old, Gendo Mandal @ Ganouri Mandal was 25 years old, Gajjo Mandal was 30 years old, Arjun Mandal was 25 years old, Bhushan Mandal was aged about 30 years Khantar Mandal was 40 years old and Mahesh Mandal son of chulhai Mandal was 30 years old. Most of them have now reached advance age during the pendency of these cases as it is occurrence of 1988, i.e. 29 years back.

33. From the record it appears that all the appellants have served substantial imprisonment in a case where identification is under serious doubt.

34. We have give our anxious consideration to the entire facts and circumstances of the case and considering the contradictions in the case regarding proper identification, chance of false implication due to gang rivalry, we are of the considered view that there is possibility of either non-identification or wrong identification in the dead night as to the accounts of the occurrence and involvement of the real miscreants in the commission of crime as crimes were committed in one or other houses inside the room and from a distance it is very difficult to identify the real culprits and also considering the fact that the version of the witnesses of seeing the occurrence and commission of crime by accused persons was not found as described by the witnesses before the police during the course of investigation and the trial court in the trial and we also noticed the failure of the so called eye witnesses in identifying the persons named in the test identification parade or in the court.



The fact that persons named as to party in the crime were not even sent up for trial or acquitted by the trial court raises serious doubt about the participation of these appellants in the commission of crime.

35. Accordingly, we are of the view that in the totality of fact situation, it is not safe to approve the judgment of conviction and order of sentence passed by the trial court. Accordingly, we set aside the judgment of conviction and order of sentence. The benefit of doubt goes in favour of the appellants.

36. These appeals are accordingly, allowed and the appellants are discharged from the liability of the bail bonds.

(Rajendra Menon, CJ)

(Anil Kumar Upadhyay, J)

spandey/-

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