

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.485 of 1992

Arising Out of PS.Case No. -25 Year- 1990 Thana – Kadamkuan (Kankarbagh) District- PATNA

Ledha Gope, son of late Dwarika Rai , resident of Mohalla Chiraiyatar, Police Station Kankarbagh, District Patna

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

with

Criminal Appeal (DB) No. 497 of 1992

Arising Out of PS.Case No. -25 Year- 1990 Thana –Kadamkuan ( Kankarbagh) District- PATNA

- 1. Sudhir Kumar Sinha @ Sudhir Kumar , son of Shri Satya Narain Prasad Sinha @ Satya Narain Srivastava.
- 2. Annu Kumar Sinha @ Anup Kumar , son of Shri Bankey Bihari Sinha Both resident of Road No. 8, Mohalla Ashok Nagar, P.S. Kadamkuan (Kankarbagh) in the town of Patna , District Patna

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

with

Criminal Appeal (DB) No. 39 of 1993

Arising Out of PS.Case No. -25 Year- 1990 Thana –Kadamkuan (Kankarbagh) District- PATNA

Manoj Paswan, son of Lal Das Paswan, resident of Mohalla Ram Nagar, Police Station Jakkanpur District Patna

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

Appearance :

(In CR. APP (DB) No.485 of 1992)  
For the Appellant/s : Mr. Animesh Kumar Mishra, amicus curiae  
For the Respondent/s: Mr. Ajay Mishra, A.P.P.

(In CR. APP (DB) No.497 of 1992)  
For the Appellant/s : Mr. Animesh Kumar Mishra, amicus curiae



For the Respondent/s: Mr. Ajay Mishra, A.P.P.

(In CR. APP (DB) No.39 of 1993)

For the Appellant/s : Mr. Animesh Kumar Mishra, amicus curiae

For the Respondent/s : Mr. Ajay Mishra, A.P.P.

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**CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR**

**and**

**HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH**

**ORAL JUDGMENT**

**(Per: HONOURABLE MR. JUSTICE RAKESH KUMAR)**

**Date: 17-07-2017**

1. In all the aforesaid three appeals, judgment and conviction in Sessions Trial No. 20 of 1991 arising out of Kadamkuan (Kankarbagh ) P.S. Case No. 25 of 1990 is under challenge and as such all the three appeals were heard together and are being disposed of by this common judgment .

2. The appellant/ Ledha Gope in Cr. Appeal (DB) No. 485 1992 was convicted under Section 307 /149 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for life. He was further convicted under Section 148 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for three years and he was further held guilty for the offence under Section 27 of the Arms Act and sentenced to undergo rigorous imprisonment for seven years. In similar manner appellant no. 1/ Sudhir Kumar Sinha and appellant no. 2 /Annu Kumar Sinha @ Anup Kumar in Cr. Appeal (DB) No. 497 1992 were convicted and sentenced. So far Manoj



Paswan, the sole appellant in Cr. Appeal (DB) No. 39 of 1993 is concerned, he was convicted under Section 307 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for life. He was further convicted under Section 148 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for three years and he was also convicted under Section 27 of the Arms Act and sentenced to undergo rigorous imprisonment for seven years. All the sentences were directed to run concurrently.

3. Short fact of the case is that on the basis of fardbyan of one Ram Ashare Yadav, which was recorded by Sub Inspector of Police D.N. Singh of Kankarbagh Police Station in the clinic of Dr. Hai in the night of 9/10 January, 1990 at about 12.30 hours. In the fardbeyan informant /Ram Ashare Yadav in injured condition disclosed that recently in Chiraiyatand one Jogi Yadav was killed in which his brother Kapil Yadav was made accused and he was in jail in the same case. He stated that for the purposes of bail on 9.1.1990 at about 5.30 P.M. on a motorcycle he was going to his lawyer for having discussion. Along with him brother -in -law of his brother namely Ravindra Kumar /P.W. 5 was accompanying him on the said motorcycle. Besides him on an another motorcycle Raman Kumar Verma /P.W. 3 was going and he was moving ahead the motor cycle of the informant. On way in Ashok Nagar Road No. 8 near Tea



shop at Dwarika College while he reached, suddenly members of Jogi Yadav group namely Ashok Kumar @ Rabbani (charge sheeted as absconder), Manoj Paswan /appellant in Cr. Appeal (DB) No. 39 of 1993 , Annu Kumar Sinha /appellant no. 2 in Cr. Appeal (DB) No. 497 of 1992 , Sudhir Kumar Sinha /appellant no. 1 in Cr. Appeal (DB) No. 497 of 1992, Ledha Gope @ Larha Gope /appellant in Cr. Appeal (DB) No. 485 of 1992 , Satya Narain Kahar @ Lohra , Mahendra Yadav and Ram Das Yadav (acquitted) all armed with pistol tried to stop his motorcycle which was not stopped. Thereafter, Sudhir Kumar Sinha , Annu Kumar Sinha and Ledha Gope caught hold of the handle of his motorcycle and all the accused persons surrounded them and thereafter Ledha Gope exhorted to kill and all the accused persons with intent to kill the informant and Ravindra Kumar, accused Ashok Kumar @ Rabbani @ Arabin Mian and Manoj Paswan/ appellant in Cr. Appeal ( DB) No. 39 of 1993 opened fire on him and Ravindra Kumar/ P.W. 5 and he received one firm arm injury on his right ribs and Ravindra Kumar received firm arm injury on right side of his neck and both fell down . He stated that both pretended as if both were dead. On the sound of firing many persons arrived there. Among them Arun Kumar was named as witness. The accused persons threatened all the persons also and thereafter, accused Ashok Rabanni shouted that Ram Ashare is now



dead and all the accused persons fled towards Ramlakhan Path. Immediately thereafter police arrived with patrolling jeep and both injured were carried by the police jeep for their treatment to P.M.C.H., but due to strike in the P.M.C.H. from P.M.H.C. they were carried to Patna City hospital, and thereafter they were carried to Danapur Railway hospital. Since there was no arrangement, they were treated in a clinic where his fardbyan was recorded i.e. Dr. Hai Clinic. Fardbyan was signed by the informant/ Ram Ashare Yadav. On the basis of fardbyan, a formal F.I.R. was drawn. This fardbyan was recorded by Sub inspector Sri Dharmnath Singh, Kankarbagh Police Station Camp and thereafter, it was forwarded to Kadamkuan Police Station for registering a case under Section 147/ 148/149/ 307/ 326 of the Indian Penal Code and Section 27 of the Arms Act. Finally, a formal F.I.R. as Kadamkuan (Kankarbagh) P.S. Case No. 25 of 1990 was registered on 10.1.1990 at 2.00 P.M. The F.I.R. was registered against nine accused persons which includes the aforesaid four appellants. After investigation charge-sheet was submitted on 1.5.1990 against all the four appellants and one Ramdas Yadav and two accused namely Ashok Kumar @ Rabbani and Ramdas Yadav showing them as absconder. Two F.I.R. named accused namely Satyanarain Kahar @ Lohra and Mahendra Yadav were exonerated by the Police. After charge -sheet on the same date



i.e. on 1.5.1990 the learned Magistrate took cognizance of offence against all the seven accused persons and on 22.12.1990 the case was committed to the court of Sessions and thereafter the case was numbered as Sessions Trial No. 20 of 1991. On 16.2.1991 charges were framed against Sudhir Kumar Sinha, Ledha Gope, Anup Kumar, Ramdas Yadav and Manoj Paswan under Section 307 / 149 , 148 of the Indian Penal Code and Section 27 of the Arms Act, whereas appellant /Manoj Paswan was further charged for the offence under Section 307 of the Indian Penal Code. Since the accused denied the charges, the prosecution to establish the case examined altogether nine witnesses. Out of them P.W. 1 namely Brijnandan Singh and P.W. 2 /Sri Niwash Singh were declared hostile, whereas P.W. 3/ Raman Kumar Verma and P.W. 5/ Ravindra Kumar (injured), have claimed as eyewitness to the occurrence. P.W. 4/ Chandrashekhar Prasad is the beetle shop owner and he stated that at about 5.00 P.M. while he was in his shop he heard sound of fire and thereafter, he closed the shop and he remained in his shop for sometime and thereafter, he as hearsay witness has stated about the involvement of the accused persons. P.W. 6 /Arun Kumar , P.W. 7/ Yogendra Prasad have claimed that after the occurrence they had seen the accused persons fleeing away whereas, P.W. 8/ Dr. K.K. Sinha has deposed regarding conducting operation on the injuries of both the injured i.e.



the informant as well as P.W. 5 / Ravindra Kumar and P.W. 9/ Sudama Singh is the Investigating Officer.

4. Sri Animesh Kumar Mishra , learned amicus curiae, has drawn our attention firstly to the evidence of P.W. 3 /Raman Kumar Verma to show concoction / implication of the appellants. He has firstly taken the court to the fardbyan of Ram Ashare Yadav and shown that Ram Ashare Yadav in his fardbyan has stated that while he along with Ravindra Kumar was moving on his motor cycle and going for consultation with his advocate, P.W. 3 / Raman Kumar Verma was moving ahead on an another motorcycle, whereas P.W. 3 /Raman Kumar Verma in paragraph no. 1 of his examination -in- chief has stated that on 9.1.1990 at about 5.30 P.M. on his own motorcycle he was going towards Dwarika College and ahead of his motorcycle there was one another motorcycle i.e. yezdi motorcycle . On the said yezdi motorcycle there were two persons on whom firing was made. Thereafter, he threw his motorcycle and moved towards the place where firing was going on. Immediately thereafter Sudhir /appellant no. 1 and Annu /appellant no. 2 respectively in Cr. Appeal (DB) No. 497 of 1992 put pistol on his chest and threatened not to move. Sri Mishra, learned amicus curiae has argued that this is vital contradiction in between the informant and P.W. 3/ Raman Kumar Verma. Sri Mishra, learned amicus curiae has also drawn our



attention to the evidence of P.W. 5/ Ravindra Kumar, who had received injury on his neck. He submits that during trial before the court below P.W. 5 had developed a story as if in the occurrence Manoj Paswan had fired which hit on his neck and Ashok Kumar had fired on the informant/ Ram Ashsre which hit on his chest (ribs). He submits that attention of Investigating Officer i.e. P.W. 9 /Sudama Singh was drawn as to whether in the statement recorded under Section 161 of the Cr.P.C. those witnesses have said this fact or not, the Investigating Officer had controverted the statement of this P.W. 5/ Ravindra Kumar. He has argued that right from the very beginning it was case of the prosecution that occurrence had taken place in between 5.00 and 5.30 P.M. in a densely populated area, however the Investigating Officer himself has stated in paragraph no. '8' of his cross -examination that for the first time he visited the place of occurrence at 3.00A.M. (in the morning) and the Investigating Officer had not found any sign relating to the occurrence at the place of occurrence. The Investigating Officer had not seen even the motorcycle over which both injured were moving and motorcycle had fallen at the time of occurrence. Similarly the Investigating Officer has stated that he had not seized the fired cartridge, which was recovered from the person of the informant / Ram Ashare Yadav , whereas P.W 8 /Dr . K.K. Sinha in his



examination –in-chief has stated that he had operated upon the injury of Ram Ashare Yadav and recovered fired cartridge from his person and handed over the same to the injured himself. According to Sri Mishra , learned amicus curiae, it appears that both the informant and P.W. 5 had received injuries somewhere else, but due to gang rivalry which has been explained by the witnesses, the appellants treating them to be members of one Jogi Yadav group, all the appellants were falsely implicated, otherwise the Investigating Officer would have certainly found blood stain at the place of occurrence, seized the motorcycle on which both the injured were moving or at least would have noticed the fact regarding use of motorcycle with number in the case diary, nor blood stained clothes were seized by the Police. In this case only two things have been got exhibited i.e. fardbyan of the informant and formal F.I.R. as Exhibit ‘1’ and ‘2’ respectively. According to Sri Mishra, learned amicus curiae it was a case of clean acquittal, but the appellants without any material on record have been held guilty and sentenced and as such, according to him, the judgment of conviction and sentence is liable to be set aside.

5. Sri Ajay Mishra, learned Additional Public Prosecutor opposing the appeals submits that there is no error in the judgment of conviction and sentence. He submits that in this case P.W. 5 is the



injured witness, and as such, evidence of P.W. 5 may not be questioned. He submits that P.W. 5 has made specific statement regarding the role played by all the accused persons in the occurrence. He further submits that it was a case of gang rivalry and in such cases lenient view may not be taken.

6. Besides hearing learned counsel for the parties, we have perused the evidence and the materials available on record. In the case it would be necessary to examine firstly the evidence of P.W. 3 / Raman Kumar Verma, who has claimed to be eyewitness to the occurrence. In paragraph no. '1' of his examination- in- chief he has categorically stated that on 9.1.1990 he was moving on his motorcycle and just ahead of his motorcycle there was one another yezdi motorcycle on which there were two persons, who were fired upon by the accused persons. He further by way of identifying the appellant/ Sudhir who was in dock stated that Sudhir and Annu both had stretched pistol on his chest and threatened not to move. He further stated that while fleeing away accused/ Manoj Paswan, Ledha Gope, Ram Dayal Yadav, Annu and Sudhir were shouting that they have taken revenge of murder of Jogi Yadav and he claimed to identify all the accused persons. However, in his cross- examination in paragraph no. '4' he had stated that he had gone to meet one of his friends in Ashok Nagar. He tried to state as if he was a chance



witness, whereas on perusal of the fardbyan of the informant / Ram Ashare Yadav it is evident that both injured on one motorcycle as well as this witness i.e. Raman Kumar Verma on another motorcycle were moving for having consultation with a lawyer. Meaning thereby, that this witness has not come out truthfully. Moreover, there is contradiction in his evidence with the fardbyan of the informant (injured Ram Ashare Yadav ) and as such, much reliance may not be placed on the evidence of this witness. On going through his cross- examination it is further evident that this witness was accused in number of cases and he had remained in jail also. In paragraph no. '3' of his cross- examination he states that his statement was recorded two hours after the occurrence, however the Investigating Officer /P.W. 9 has himself accepted in paragraph no. '8' of his cross- examination that for the first time he arrived at the place of occurrence at about 3.00 A.M. ( morning). Similarly, the evidence of P.W. 5 though he had received injury, may not be accepted in its totality for number of reasons. This witness has stated that he received gun shot injury on his neck and informant had also received fire arm injury on his chest (ribs), but he stated that both injured pretended as if they were dead to deviate the attention of the accused persons, who all were armed with pistol. The court is in agreement with the submission of Sri Mishra, learned amicus curiae,



that in such injured condition it is not expected that injured will take such pretence. It is evident from paragraph no. '5' of his cross - examination that he gained full consciousness after two days of the occurrence. Once he had received such serious injuries it is really not expected that the injured will pretend as if he was dead to save his life and move to a drain. It is the case of the prosecution that after receiving injury both victims had fallen into a drain. Moreover, the statement of this witness that Manoj Paswan had fired on him was belied by the Investigating Officer ( P.W. 9 /Sudama Singh). In cross -examination in paragraph no. '17' P.W. 9 has stated that Ravindra Kumar had never said that accused persons have caught the handle of the motorcycle. He has further stated in paragraph no. '17' in his cross- examination that Ravindra/ P.W. 5 has never said that Manoj Paswan had fired several rounds. In paragraph no. '18' of his cross-examination he has further stated that Ravindra had not stated that the fire arm injury given by Manoj Paswan had hit his neck. Accordingly, in view of the evidence of the investigating officer /Sudama Singh the evidence of P.W. 5/ Ravindra Kumar come into the cloud of doubt.

7. It is a peculiar case in which though occurrence had taken place in the evening of 9<sup>th</sup> January, 1990 and it was claimed by the prosecution that both the injured were carried on police jeep



firstly to P.M.C.H., thereafter to Patna City Hospital and again they were carried to Danapur Railway Hospital and finally, they were treated at Dr. Hai clinic, the Investigating Officer is silent on this point nor in the case, injury report which was examined while the injured were being examined at Dr. Hai Clinic was brought on record or got exhibited. Even the doctor who had subsequently operated over the injuries of both the persons i.e. Ram Ashareya Yadav as well as Ravindra Kumar had categorically stated that injury report was to be produced by the doctor who had firstly examined the victim. He produced a photo stat copy of discharge certificate of both the victims. In respect of discharge of Ram Asharey Yadav/ informant this P.W. 8/ Dr. K.K. Sinha has stated that he was discharged on 14.2.1990 and he was admitted on 11<sup>th</sup> January, 1990 whereas, occurrence had taken place on 9.1.1990. This witness P.W. 8/ Dr. K.K. Sinha in paragraph no. '5' of his cross-examination has stated that injured had come first with Police but he refused to examine them but two or three days later they again came. He stated that he was not in a position to remember as if on two occasions the injured had come with Police or not. This witness has stated as follows:-

*“On 14<sup>th</sup> Feb. 1990, I operated upon one Ramashraya Yadav S/o Nanhu Yadav Kankarbagh Colony Ashok Nagar, Patna. He was admitted under my care for Gun shot injuries of chest and*



*abdomen. Bullet entered the body in the ninth inter costal space in the mid auxilliary line on the right side went through the liver left leaf of the diafrgm and entered the interior segment of the left lower low of the lung. He underwent two operation one on the abdomen and the other on the chest from where the bullet was removed and which was handed over to the injured. Extensive damage to the liver and left lung was caused which were dealt with. The injuries were grievous and caused by bullet fired from a weapon suitable for bullet remove. He was admitted to my clinic on 11<sup>th</sup> Jan. 1990 and was discharged on 14<sup>th</sup> Feb 90. The date of operation stated in the beginning as 14<sup>th</sup> Feb. 90 is not date of operation rather date of the certificate.*

*2. I also operated on Ravindra C/o Ramashraya Yadav Kankarbag Colony. He was admitted for Gun shot injury on the neck. He was operated 15/1/90. The bullet entered right side of the neck posterior at a point 3" to the right of the mid line at the level of the sixth survical spine. Track fractured the muscle of the posterior trangle splenius, lavetor scapuli, scalenus medius and hit the transfer processes of the sixth and fifth ventricle causing some clippie and fracture and then went forward to the large posterior wall of the ferries deep to the muscles and behind the sweat vessels. The bullet was removed and injuries track repaired. The wound was grievous and caused by bullet."*

8. He further stated that original injury report was required to be issued by the doctor who had first examined the injured and he provided photo stat copy of injury report, which was prepared by him in his pen, which were marked as Exhibit 'X' and 'X/1'. The Investigating Officer (P.W. 9/ Sudama Singh ) in paragraph no. '10' of his cross-examination has stated that he had not received injury



report from Dr. Hai Clinic. Again in paragraph no. '11' of his cross - examination he has stated that he had never seized any cartridges from the clinic of Dr. K.K. Singh nor he had seized the motorcycle or referred anything about the motorcycle in the case diary. P.W. 6 / Arun Kumar who had claimed that after the occurrence he had seen the accused persons fleeing away with pistol also appears to be untruthful since in paragraph no. '2' of his cross -examination he has stated that both injured i.e. Ram Ashare /informant and Ravindra / P.W. 5 were having no relation with him as they were resident of the same mohalla , whereas in paragraph no. '3' he has stated that he was knowing Kapil, who was elder brother of Ram Ashre /informant and Kapil was his own brother- in- law. Further in paragraph no. '7' of his cross- examination he stated that injured were saying the name of the accused persons who had fired and they were requesting for carrying them for treatment whereas the injuries which were found on the persons of Rama Ashare as well as Ravindra suggests that they were not in a position to make such a statement, rather P.W. 5/ Ravindra himself has accepted that he regained full consciousness two days after the occurrence. In the prosecution case during the trial the prosecution has not produced the injured/ informant. However during cross- examination this fact has come that the said Ram Ashare Yadav was killed in police encounter.



9. On examining the entire materials available on record it is established that neither at the place of occurrence any sign showing occurrence was found nor the motorcycle which was fallen at the time of occurrence was noticed or seized by the police. No tyre mark of motorcycle was found at the place of occurrence. In the case injury which was firstly examined was not got proved during the trial nor the Investigating Officer had stated anything about such injury report. One of the doctor i.e. Dr. K.K.Sinha who had operated and extracted the cartridge from the body of the informant, his evidence further creates serious doubt on the prosecution case. Only on the ground that one of the injured Ravindra Kumar has named the appellants, the appellants may not be held guilty in absence of any other corroborative evidence and the evidence of P.W. 5 itself appears to be not very truthful since in deposition before the Court below and in his statement under Section 161 of the Cr.P.C. there was some contradiction.

10. Considering complete absence of direct material establishing guilt of the appellants, the court is of the opinion that the appellants deserve the benefit of doubt. Accordingly, by way of extending benefit of doubt all the three appeals are allowed and the judgment of conviction and sentence is hereby set aside. The appellants were enlarged on bail at the time of admission of the



appeals and as such, since the judgment of their conviction and sentence has been set aside, they are hereby discharged from liability of their bail bonds.

**(Rakesh Kumar, J)**

**(Mohit Kumar Shah, J)**

Praful/-

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