

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.122 of 1993

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1. Jageshwar Mahto, son of Raghunandan Mahto, resident of village Juri Tola Nawadih, P.S. Raushanganj, District, Gaya (since dead).
 2. Tulsi Mahto, son of Raghu Mahto, resident of village, Salbar, P.S. Imamganj, District, Gaya

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. N. A. SHAMSI, Advocate Mr. S. Ehteshamuddin, Advocate
For the Respondent/s	:	Mr. A. K. Sinha, APP

CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN
and
HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT
(Per: HONOURABLE DR. JUSTICE RAVI RANJAN)

Date : 16-11-2017

Perused the report of the Senior Superintendent of Police
Gaya.

It is stated that the appellant no.1 Jageshwar Mahto died
on 24.01.2016.

In view thereof, this appeal, so far it concerns the appellant
no.1, namely, Jageshwar Mahto, stands abated.

This appeal has been preferred against the judgment of
conviction and order of sentence dated 11.02.1993 passed by
8th Additional Sessions Judge, Gaya, in Sessions Trial No. 83
of 1990/223 of 1990 arising out of Amas P.S. Case No. 37 of
1987 by which the appellant no.2 has been convicted under



Sections 364 and 302/149 of the Indian Penal Code and has been sentenced to undergo rigorous imprisonment for life under Sections 302/149 of the Indian Penal Code. No separate sentence has been awarded under Section 364 of the Indian Penal Code.

The prosecution case, in brief, is that on 8.05.1987 at 10.30 P.M., the informant was sitting at the *veranda* of his house and a lantern was burning there. The informant was also having a torch in his hand. Suddenly, he found that a group of 20-25 persons were coming from the *Madarsa* side. They were also flashing torch on the informant. The informant identified Bachu Koeri of village-Bhokaha, Jageshwar Mahto of Nawadih, Devendra Mahto and Tulsi Mahto of village-Salwar. All were armed with pistols in their hands. The informant made his way inside the house after seeing these persons coming towards his house and closed the door. However, these persons kicked at the door planks and knocked it violently in order to open it but the door did not open and then these persons climbed up the roof of the house and descended into the courtyard through the staircase and started searching for the informant. The informant out of fear checked out of the house through the eastern door and raised alarm. The villagers gathered and all found that the



informant's brother Baliram Prasad and the informant's son Krishna Prasad were forcibly taken away by the criminals, who had trespassed into the informant's house. The informant rushed to Nawada Picket of police force. One police officer of Nawada Picket came to the informant's house and searched for the kidnapped persons along with some villagers but they could not be traced in the night. In the next morning, the dead bodies of Baliram Prasad and Krishna Prasad were found near the hillock.

On the basis of fardbeyan, Amas P.S. Case No.37/1987 was registered under Sections 147, 148, 149, 452, 323, 364 of the Indian Penal Code. Later on, Section 302 of the Indian Penal Code was also added. The police took up the investigation of the case and, after investigation, submitted charge sheet. Thereafter, cognizance was taken and the case was committed to the court of sessions, where charges were framed under Sections 364, 302/149 of the Indian Penal Code, to which, the accused persons pleaded not guilty. Thereafter, trial started against the appellant and others.

During trial, the prosecution has examined altogether seventeen witnesses in support of its case. P.W. 1 is Anuj Kumar, P.W. 2 is Siya Ram Mahto, P.W. 3 is Ramsaroop Mahto, P.W. 4 is Bhundeshwar Sharma, P.W. 5 is Dukkhan Mahto, P.W. 6 is



Md. Kalamuddin, P.W. 7 is Sarita Devi, P.W. 8 is Niru Mahto, P.W. 9 is Girja Kumari, P.W. 10 is Chandravati Devi, P.W. 11 is Janki Devi, P.W. 12 is Dr. Mangla Pd. Singh, P.W. 13 is Mithlesh Kumar Sinha, P.W. 14 is Munna Binda Paswan, P.W. 15 is Ramchandra Ram, P.W. 16 is Murari Pd. Singh and P.W. 17 is Ravi Ranjan.

The defence has not examined any witness on its behalf.

The trial court, after hearing learned counsel for the parties and considering the evidence on record came to the conclusion that the prosecution has been able to prove the charges against the appellant and accordingly, impugned judgment of conviction and order of sentence has been passed.

Now this Court is required to reappraise the prosecution evidence to see as to whether the prosecution has been able to substantiate its case beyond shadow of all reasonable doubts or not.

It appears that accused persons were known the informant's family, therefore, their identification may be meaningless.

In the first information report, it is stated that the informant saw 22-25 persons were coming to his house. At the forefront, it was Bachhu Koiri, Jageshwar Mahto, Devender Mahto, Tulsi Mahto. However, Bachhu Koiri and Devender Mahto have not



faced trial. He further stated that they were fully armed with pistol and the informant out of fear ran inside the house and closed the door. They tried to break open the door but could not succeed then they climbed to the roof (chappar). Looking this, the informant escaped and raised the alarm and, thereafter, people of that locality assembled there. However, hearing the threat and firing by the miscreants, they fled away. The informant went to bring the police and when he returned with the police, he came to know that his brother, Baliram Prasad and his son Krishna Prasad have been abducted by the miscreants. He accepts that there is a land dispute between him and Jageshwar Mahto and Tulsi Mahto, who happens to be the brother-in-law of the Jageshwar Mahto. He has stated that son of his brother-in-law (Sala) had identified Gopu Koeri in abduction. He has been examined as PW 2. While being examined as PW 2, he has stated that he has identified Madan Koeri in Test Identification Parade. However, later on, he has stated that he knows that Madan Koeri and Nandkisore Koeri are brothers but he does not know whether both of them are brother-in-law of Jageshwar Mahto or not. This definitely gives a clue that Madan and Nand Kisore were known to him. Therefore, the identification of Madan Koeri in Test



Identification Parade was meaningless. He further accepts in the cross-examination that on raising alarm by him, Ram Swarup, Lal Yadav and other villagers were assembled but he did not disclose to anybody that he had identified the dacoits. When he reached the police *chauki*, he again accepts that he did not disclose the name of the miscreants to the police. He has stated that the police came to the house along with him but he did not go inside the house. He remained at the door and then again returned back in search of the kidnapped persons and after 2 to 4 hours the police again came back then fardbyean was recorded disclosing the name of the accused persons and, at that time, the police did not enter the house of the informant.

PW 3 admits that he had never gone to the place of occurrence and he has stated that the police had not recorded his statement. At one place, he says that when the police returned back then the informant took the names of Bachhu, Devendra, Tulsi and Jagga in front of him. However, during the cross examination, he has again stated that he had heard the informant taking the names of the accused persons today itself.

PWs. 4, 5 and 6 have stated nothing and they were declared hostile by the prosecution.



PW 7, sister-in-law (Bhabhi), has supported the case of kidnapping but has not stated that who had actually done that. It does not appear from the record that she had given particular information to identify the accused persons. Her name does not stand stated by the Judicial Magistrate concerned who has been examined as PW 16. PW 8 says that he had identified Jageshwar Mahto and Tulsi Mahto at the time of occurrence in the light of 'Dibhri' as they were carrying gun, though the case of the informant is that they were carrying pistol/revolver. He has given statement before the police but what we find from his statement which is available in case diary at paragraph no.5 that he has not taken the name of any of the miscreants, though it is well known that Jageshwar Mahto was known to the family from before and there was land dispute with the family also.

Neeru Mahto claims that he had received injury by the butt of the gun. Admittedly, the informant has stated in his fardbeyan as well as while being examined as PW 2 the miscreants were carrying pistol/revolver. Allegedly, five injuries have been found. Injury no. 1 to 3 are stated to have been caused by sharp edged substance fitted in the gun or of the rifle and 4 and 5 were found to be superficial injuries. The doctor, who has been



examined as PW 12, has stated that he has not mentioned the time of examination in the injury report or the age of the injury.

Doctor, PW 13, has done autopsy on the dead body and he has opined regarding the time of death to be within 30 to 36 hours.

The Investigating Officer has been examined as PW 14. He has stated in his deposition that Siyaram Mahto, when came to the picket informed that dacoits are trying to break open the door of his house, therefore, it is quite clear that Siyaram Mahto did not inform the police that the persons named in the first information report had come along with other person and that he had identified them.

Upon appreciation of the evidence, it appears that due to the aforesaid reason the testimony of PW 2, i.e., the informant becomes a vital piece of evidence as even Anuj Kumar, PW 1 has also become hostile and has not supported the case of the prosecution. Doubt stands created in view of the deposition of PW 2 also for the reason that admittedly land dispute was there, he knew the accused persons who have been named in the first information report, however, even then he did not disclose it either to the villagers or to the police at the first instance and after several hours when the fardebeyan was being recorded,



according to his evidence and deposition of I.O., he first time disclosed the names. This is a case of eye witness with respect to the abduction/kidnapping of two persons. So far as the murder is concerned, it becomes a case of circumstantial evidence. There is nothing to connect Tulsi Ram (appellant no.2) with the murder of the two persons save and except that he was seen with the miscreants as has been stated by the informant but again the informant's deposition and F.I.R. cannot be considered to be trustworthy as admittedly the informant did not disclose anything at the first instance to anybody and after several hours, this was disclosed that Tulsi Mahto (appellant no.2) was also present. This creates serious doubt.

Considering the facts and circumstances stated above, it appears that the prosecution has not been able to substantiate its case beyond all reasonable doubts. Thus, the appellant no.2 is entitled to get the benefit of doubt.

Accordingly, the judgment of conviction and order of sentence dated 11.02.1993 passed by 8th Additional Sessions Judge, Gaya, in Sessions Trial No. 83 of 1990/223 of 1990 arising out of Amas P.S. Case No. 37 of 1987, so far it concerns the appellant no. 2 Tulsi Mahto, is set aside. Since he is on bail, he is discharged from the liability of the bail bonds.



In the result, this appeal is allowed.

(Dr. Ravi Ranjan, J)

(S. Kumar, J)

Spd/-

AFR/NAFR	AFR
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