

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.7 of 1994

(Against the judgment of conviction and order of sentence dated 22.12.1993
passed by Sri D.G.R. Patnaik, learned 3rd Additional Sessions Judge,
Sitamarhi in Sessions Trial No. 221 of 1992, arising out of Riga P.S. Case
No. 122 of 1992)

- =====
1. Krishna Kumar Purbey, son of Rameshwar Purbey, resident of Village- Sangram Fandesh, Police Station- Riga, District- Sitamarhi.
 2. Lal Babu Gupta @ Lalu Gupta, son of Awadesh Prasad Gupta
 3. Prem Gupta, son of Awadesh Prasad Gupta
- Both residents of Riga Mill Bajar, Police Station- Riga, District- Sitamarhi.
.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

With

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Criminal Appeal (DB) No. 20 of 1994

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Sakal Mahato, son of late Khelawan Mahto, resident of village- Sangram Phandah,
P.S.- Riga, District- Sitamarhi.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

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Appearance :

(In CR. APP (DB) No.7 of 1994)

For the Appellant/s : Mr. Prasoon Sinha, Advocate

For the Respondent/s : Mr. APP

(In CR. APP (DB) No.20 of 1994)

For the Appellant/s : Mr. Prasoon Sinha, Advocate

For the Respondent/s : Mr. APP

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY)

Date: 11-11-2017

Both the appeals arises out of the common judgment
of conviction and order of sentence dated 22.12.1993 passed by Sri
D.G.R. Patnaik, learned 3rd Additional Sessions Judge, Sitamarhi in



Sessions Trial No. 221 of 1992, arising out of Riga P.S. Case No. 122 of 1992, whereby all appellants of Cr. Appeal (DB) No. 07 of 1994 have been convicted under Sections 147, 188 and 427/149 of the Indian Penal Code and the appellant no.1, namely, Krishna Kumar Purbey of Cr. Appeal (DB) No. 07 of 1994 has also been convicted under Section 325 of the Indian Penal Code and sentenced to undergo R.I. for one year under Section 427/ 149 of the Indian Penal Code. The appellant no.1, namely, Krishna Kumar Purbey of Cr. Appeal (DB) No. 07 of 1994 has been sentenced to undergo R.I. for three years under Section 325 of the Indian Penal Code. No separate sentence was passed under Sections 147 and 188 of the Indian Penal Code. However, both the sentences have been ordered to run concurrently.

2. The sole appellant, namely, Sakal Mahto, of Cr. Appeal (DB) No. 20 of 1994 has been convicted by the trial court for the offence under Sections 302, 148, 188 and 427/149 of the Indian Penal Code and sentenced to undergo R.I. for life for the offence under Section 302 of the Indian Penal Code. He has further been sentenced to undergo R.I. For one year each for the offence under Sections 148 and 427/149 of the Indian Penal Code. No separate sentence was passed under Sections 147 and 188 of the Indian Penal Code. However, both the sentences have been ordered to run



concurrently.

3. The prosecution case as appears from the written report of the informant (S.D.O. Sitamarhi District) is as follows:

On 08.10.1992 at about 10.00 A.M., the informant was posted at Riga Mill Chowk area along with Armed Force for maintaining law and order. At that time an unlawful assembly of more than 500 persons had assembled at the Riga Mill Chowk and started looting and burning the shops and dwelling houses of Muslims. The informant cautioned the members of the unlawful assembly to disperse, but they did not pay heed to the cautions. In order to maintain the law and order, the informant had to resort to lathi charge, in spite of that the mob did not disperse. Thereafter the informant had to order for opening fire and accordingly three rounds were fired by the armed force at the mob. The mob thereafter dispersed and fled towards Riga-Sitamarhi Station Road area and subsequently assembled on Station Road and started looting and burning shops and houses. The informant reached Station Road area and attempted to control the mob, but when it became more violent firing had again to be resorted to and 3 rounds were fired at the mob, as the consequence of which the mob dispersed. 21 persons out of the mob, while they were fleeing, were apprehended by the police officials, who were present there. Those persons were interrogated and thereafter



remanded to police custody and subsequently they were forwarded to custody.

4. The police after investigation submitted charge-sheet against 30 persons for the common charge under Sections 147, 153A, 436/149, 186, 427/149, 380, 302/149, 353, 435/439 of the Indian Penal Code. Thereafter the learned Magistrate took cognizance of the offence and committed the case to the Court of Sessions.

5. The trial court, however, framed charge under Section 302 and 148 of the Indian Penal Code against the sole appellant Sakal Mahto of Cr. Appeal (DB) No. 20 of 1994, whereas charge under Sections 307/149 of the Indian Penal Code was framed against the appellant no.1 Krishna Kumar Purbey of Cr. Appeal (DB) No. 07 of 1994. The appellants have pleaded not guilty and as such they have put on trial.

6. During the course of trial, the prosecution examined altogether 64 witnesses, out of which 43 witnesses were tendered and only relied upon 21 witnesses, namely, P.W.1 Md. Aslam, a minor boy aged 12 years, P.W.20 Razaqu Mian, P.W.30 Md. Rafiqu Ansari, P.W.4 Rasul Ansari, P.W.5 Naseeb, P.W.6 Abdul Hamid, P.W.9 Jainul Ansari, who is a formal witness, P.W.10 Dr. Om Prakash Chaurasiya, P.W.11 Dr. Yugal Kishore Choudhary, P.W.12 Ram Ayodhya Ram, P.W.13 Rajendra Rai, P.W.19 Julekha Khatoon,



P.W.21 Dr. Pradeep Nandan, P.W. 22 Dr. Manoj Kumar, P.W.23 Sabal Kishore Singh, P.W. 25 Ram Nath Prasad Yadav, who is also a formal witness, P.W. 35 Srikant Singh, P.W. 40 N.D. Khan, who is the investigating officer of the case, P.W.41 Ramjit Singh (informant), P.W. 42Chandi Kumar Mitra, P.W. 46 Kedar Nath, P.W. 47 Vijay Kumar Sinha and P.W. 64 Dr. Sunil Kumar Sahay.

7. The trial court after scrutiny of the evidence convicted the appellants for the offences mentioned in the preceding paragraph.

8. Mr. Prasoon Sinha appearing on behalf of the appellants submitted that these appellants have been convicted by the trial court in communal riot. He has submitted that the instant case is a peculiar case, where none of the accused mentioned in the fardbeyan were found guilty for any offence, whereas the appellants were not named in the F.I.R. have been convicted in this case. In fact, the conviction of the appellants is the result of manipulation and false implication. He has drawn the attention of the Court to the formal F.I.R. The F.I.R. was lodged on the fardbeyan of S.D.O. (West) Sitamarhi. The occurrence of communal riot, arson loot leading to loss of life took place within the police station falling in the territorial jurisdiction of Sitamarhi, but the fardbeyan was lodged and formal F.I.R. was registered in Riga police station. The occurrence took place



on 08.10.1992 at around 10.30, the formal F.I.R. was drawn on 08.10.1992, which was dispatched on 11.10.1992, but curiously enough the formal F.I.R. was seen by the C.J.M. on 12.10.1992. He submitted that in view of inordinate delay in sending the formal F.I.R. and its receipt and seen by the C.J.M. on 12.10.1992 creates serious doubt about the improvement of the prosecution case and false implication of the appellants. Moreover, the trial court while acquitting all the accused persons named in the F.I.R. has disbelieved the foundation of the case as founded in the Fardbeyan by the Sub-Divisional Officer, Sitamarhi (West).

9. Mr. Prasoon Sinha has relied upon several judgments of the Apex Court to contend that the delay in sending the F.I.R. is sufficient to doubt the credibility of the prosecution case. Mr. Sinha submitted that the trial court found the sole appellant (Sakaldeo Mahto) of Cr. Appeal (DB) No. 20 of 1994 guilty for the offence under Section 302 of the Indian Penal Code and also for the offence under Sections 148, 188, 427/149 of the Indian Penal Code. The trial court also found the appellant Krishna Kumar Purbey of Cr. Appeal (DB) No. 7 of 1994 guilty for the offence under Section 325 of the Indian Penal Code and all the appellants of Cr. Appeal (DB) No. 7 of 1994 guilty under Sections 147, 188, 427/149 of the Indian Penal Code, however, the trial court in the absence of sanction acquitted the



appellants and others for the offence under Section 153A of the Indian Penal Code. The trial court did not find any evidence against any of the accused persons for the offence under Section 436/149, 435/149, 380/149 and 353 of the Indian Penal Code and all the appellants were acquitted for the said charges.

10. Mr. Sinha has drawn the attention of the Court to the deposition of P.W.41, the informant of the case, who deposed in the Court that at the relevant time he was posted at Sitamarhi (West) as S.D.O. and in order to maintain law and order, he visited Riga and he saw rioters were equipped with weapons and putting a blaze the hut and houses, most of them belonging to Muslim community and the rioters were also involved in loot. In his deposition he stated that in order to disperse the mob after cautioning the mob, he ordered for firing. He also mentioned in his deposition that he again ordered for firing at main road, when the mob turned violent and started putting the house on fire. When he saw the mob were setting the houses on fire, the informant in his deposition specifically mentioned that he has ordered for arrest of the rioters, the members of the mob involved in the occurrence and at his instance 21 persons were apprehended. In his deposition he has mentioned that approximately 200 persons were engaged in riots.

11. Mr. Sinha referring to the deposition of the



informant of the case submitted that the informant has specifically named the accused persons involved in the actual riot, but none of the person, who were involved in the activities of riot, arson loot despite arrested on spot, were convicted by the trial court and these appellants have been convicted, although neither named in F.I.R. nor arrested at spot. Mr. Sinha has referred to the statement of the informant, who in his deposition stated that the Daroga S. N. Singh has recorded his statement and after reading the contents of the fardbeyan he put the signature and identified the same, which was marked as Ext.11. Mr. Sinha again submitted that the informant has specifically mentioned that the fardbeyan was written in the hand writing of S. N. Singh. In this case S. N. Singh has also been examined as a Court witness. Referring to the deposition of S. N. Singh, the alleged author of the fardbeyan, who in his deposition has stated that the fardbeyan of the informant Ramjeet Singh (S.D.O. Sitamarhi) was not written in his hand writing after seeing Ext.-11. He has identified after seeing Ext.-11 (fardbeyan) that it was written in the hand writing of Ram Lolit Rai, the literate constable of Riga police station. Referring to Sanha Entry No. 132, he submitted that on the date of occurrence in connection with investigation he has gone to Chandiha village and referring to Sanha Entry No. 273 dated 12.10.1992, he deposed that he reported back to Riga police station at 4.00 P.M. on 12.10.1992. This



Court witness has proved the details mentioned in the Sanha register of Riga police station about his departure and rival. Mr. Sinha referring to the deposition of Court witness S. N. Singh submitted that the deposition of this witness falsifies the prosecution case that the fardbeyan was written by S. N. Singh, S. I. of Riga Police Station. Mr. Prasoon Sinha argued that in this case, the foul play was practiced by the investigating officer of the case Mr. N. D. Khan. In fact S. N. Singh was out of Riga police station from 07.10.1992 and reported back only at 4.00 P.M. on 12.10.1992 and as such when he disputed his hand writing on the fardbeyan and establishes his absence from the Riga police station up to 4.00 P.M. on 12.10.1992 and the prosecution case in such circumstance has to be discarded for the additional reason that the S. N. Singh was posted at the relevant time at Riga police station and was conversion with the with the hand writing of literate constable R. L. Rai and when the deposition before the Court that the fardbeyan was in the hand writing of R. L. Rai, it was obligatory on the part of the prosecution to examine R. L. Rai, the alleged author of the fardbeyan, the foundation of this case.

12. Mr. Sinha has also drawn the attention of this Court to the deposition of the investigating officer (P.W.40) to demonstrate the high handedness of the investigating officer and referring to the deposition of the investigating officer that the entire



prosecution case on which these appellants have been convicted is based on concoction and is liable to be disbelieved. Mr. Sinha submitted that in the instant case the investigating officer was behaving in a partisan manner and as such he was subsequently replaced by another investigating officer. Referring to the deposition of P.W. 40 (investigating officer) he submitted that the investigating officer has stated in para 6 of his deposition that the formal F.I.R. was drawn at his direction by S.I. Shambhu Nath Singh, which bears his signature. The formal F.I.R. was marked as Ext. 8.

13. Mr. Sinha submitted that as per the statement of this investigating officer and the deposition of the Court witness S. N. Singh and the fact that C.J.M. has seen the F.I.R. on 12.10.1992, it is manifest that the formal F.I.R. was drawn only on 12.10.1992 when S. N. Singh returned back to Riga police station and that is why only on 12.10.1992 the alleged formal F.I.R. was drawn antedating 08.10.1992 (in fact drawn on 12.10.1992), and as such the F.I.R. reached the C.J.M. on 12.10.1992. The investigating officer in his deposition has mentioned that the place of occurrence is Babangama Chowk where the different shops and vehicles were seen by the investigating officer on fire. The investigating officer in his deposition has mentioned the details of the house, shops and the vehicles, which were set a blaze by the rioters. This witness in para 9 mentioned that



the second place of occurrence is Govind Ghandha, the paddy field of Ram Vinay Thakur of village Panchhor, where he found the dead body of Ayub Mian son of Sakhur Ahmad. In the paddy field he found water. Near the place of occurrence, the paddy crop was standing. He mentioned that the 3rd place of occurrence is 200 yards north-west to the Govind Ghandha, near new Idgah. The paddy field of Yakub Mian and this field there was also water logged where he found dead body of deceased Islamul, wife of Abbas Mian.

14. Mr. Sinha invited the attention of the Court to the attitude and approach of this investigating officer. Referring to para 32 of the deposition of the investigating officer where he admitted that in Riga Bazar several houses of the Hindu were also set on fire but he has not lodged any separate case at the instance and statement of the Hindus and submitted that because of partisan attitude he was subsequently changed and replaced by another investigating officer.

15. Mr. Sinha thereafter has drawn the attention of the Court towards the deposition of the investigating officer here he had admitted in para 37 that S. N. Singh was out of Riga police station to village Chadaha 8 K.M. away from the Riga police station and he was out of Riga police station during 08.10.1992, 09.10.1992, 10.10.1992 and 11.10.1992 and only returned at 4.00 P.M. on 12.10.1992. This statement of investigating officer read with statement of the Court



witness Shambhu Nath Singh renders the prosecution case doubtful, as the witnesses are at variance in the matter of recording of the fardbeyan of informant (S.D.O.).

16. Mr. Sinha thereafter drawn the attention of the Court to the deposition of the investigating officer at para 31 where he has said that the rioters were lead by one person wearing Gerua Vastra. Mr. Sinha has invited the attention of the court to the inquest report of Islamul, wife of Abbas Mian. According to the inquest report, the dead body was found in the paddy filed in a Sareh in village Panchhor at 2.30 P.M. on 08.10.1992. As per inquest report the neck of the deceased was cut by the sharp cutting weapon. The dead body of Ayub Khan was also recovered from the paddy filed of Sareh of Panchhor. Referring to the aforesaid discrepancy, he submitted that the conviction of the sole appellant Sakaldeo Mahto of Cr. Appeal (DB) No. 20 of 1994 under Section 302 of the Indian Penal Code has been made on the basis of the deposition of P.W.1 and P.W.2. He state that P.W.1 and P.W.2 are the witnesses, who were accepted as eye witnesses of the occurrence and on whose statement appellant Sakaldeo Mahto of Cr. Appeal (DB) No. 20 of 1994 has been convicted under Section 302 of the Indian Penal Code.

17. Mr. Sinha has drawn the attention of the deposition of P.W.1. P.W.1 stated that he along with his grand-father,



grand-mother, sister and mother on the date of occurrence, after hearing halla left their houses while moving towards the paddy field his mother fell down in the midst while he hided in the paddy field and Sakal mahto has killed his mother by Katta. He has stated that he has seen Sakal Mahto earlier. This witness has stated that he remained hided in the paddy field in the paddy field for 1 – 1 ½ hours and the Idgah is located in west of the paddy field, in between there is a wall approximately 5 feet height. Referring to his deposition, Mr. Sinha highlighted that this witness cannot be relied as eye witness, as according to this witness he was hiding himself in the paddy field and in that situation he was not in a position to see the actual occurrence. Referring to the further deposition Mr. Sinha stated that in between the place where he has hidden himself and the place of occurrence, there was a 5 feet height wall and as such it was not possible for him to identify the assailant. This witness has stated in his deposition that he remained in village up to 4.00 P.M. and thereafter left for Panchhor village and he returned in the village on the next day.

18. He stated that the police did not turn up in the village on the next day. Mr. Sinha submitted that statement of this witness was recorded under Section 164 of the Cr.P.C. after 10-15 days of the occurrence. Mr. Sinha submitted that this witness in his statement under Section 164 of Cr.P.C. stated that he has seen Sakal



Mahto once and on that basis he claimed to have identified Sakaldeo Mahto when there is no specific material to identify Sakal Mahto, as the P.W.1 and Sakal Mahto belongs to different village and there was no material of establishing acquaintance and identification of the P.W.1 with Sakal Mahto justifying his identification in the commission of crime and as such conviction on his identification is not proper. In fact P.W.1 was tutored and that is why the name of Sakal Mahto has surfaced in the case as an after thought. Referring to the deposition of P.W.2 he submitted that P.W.2 has stated that 150-200 rioters were equipped with Lathi, Bhala, Gadasa etc. and he did not recognize the person leading the mob of 150-200 people. He has stated that he along with other family members were fleeing towards the village through new Idgah and returned back to the village after 1½ hour. He deposed that his daughter-in-law Islamul did not return the village and on search he found Islamul was lying dead, then his grand son informed him that out of the rioters Sakal Mahto has killed his mother. Mr. Sinha submitted that actually P.W.2 has not seen the occurrence and in fact he was banking on the version of P.W.1. It is most unnatural on the part of P.W.1 not to disclose the members of the family about the killing of his mother when he has seen the mother being killed by Sakal Mahto but he did not disclose this fact when on return to the village the family members started search of his mother



and after 1½ hour of the search and recovery of the dead body he disclosed that his mother was killed by Sakal Mahto. In addition thereto the P.W.2 in his deposition has stated that place of occurrence falls in the Sitamarhi police station and he has not reported the incident to the police station. This witness in para 6 of his deposition has stated that he took the dead body of the deceased to his residence and in the morning at 3.00 A.M. the officials of the administration came and the dead body was carried out on the vehicle of the administration for post-mortem and thereafter it was returned.

19. Mr. Prasoon Sinha referring to the specific statement of P.W.2 submitted that this witness has categorically stated before the Court that the dead body of deceased Islamul was taken by them to their residence and from that place the dead body was taken on the vehicle of the administration for post-mortem and after post-mortem, the dead body was returned back. This statement runs contrary to the inquest report and the deposition of P.W. 40 (investigating officer). The investigating officer and inquest report are consistent on the point that the dead body of Islamul was recovered from the paddy field of Sareh in village Panchhor, whereas the witness P.W.2 has categorically stated that the dead body of Islamul was taken back to the residence and from there the dead body was sent for post-mortem and after post-mortem the dead body was



handed over to them at his residence. The discrepancy in the version of the investigating officer, the inquest report, as to the place of occurrence and recovery of the dead body and the account of P.W.2 that the dead body was taken back to his residence and from his residence the dead body was taken for post-mortem in the morning at 3.00 A.M. militates against the inquest report, which indicates that the dead body was recovered from the paddy field of Sareh in village Panchhor at 2.30 P.M. on 08.10.1992. The aforesaid discrepancy in the version of the investigating officer, inquest report and the statement of P.W.2 renders the deposition of the witnesses unrealistic and unbelievable.

20. Mr. Sinha referring to the aforesaid circumstance submitted that the under the situation like the instant when such a vital contradiction are available in the deposition of the so-called eye witness and the inquest report and the definite version of the investigating officer as to the recovery of the dead body, the conviction of the appellants for the offence under Section 302 of the Indian Penal Code is not safe.

21. Counsel for the State on the other hand submitted that it is true that the person named in the F.I.R. have been acquitted in this case. Major portion of the prosecution case was disbelieved by the trial court. It is also true that there are discrepancies in the version



of the witnesses as to the hand writing of the writer of the fardbeyan and the variance in the matter of the deposition of the witnesses as to the recovery of dead body, yet the conviction of the appellants cannot be doubted on the basis of such discrepancy.

22. We have given anxious consideration to the entire prosecution case and find that no explanation for the delay in recording of fardbeyan and the delay in reaching the court of C.J.M., the formal F.I.R. was drawn on 08.10.1992, but it reached the court of C.J.M. only on 12.10.1992. In fact the Apex Court has held out in numerous cases that the delay in sending the F.I.R. creates serious doubt about the false implication and improvement. Reference in this connection is being made to the Apex Court judgment in the case of State of Punjab Vs. Tarlok Singh, reported in (1972) 3 SCC 869 (para 5) and in the case of Ishwar Singh Vs. the State of Uttar Pradesh, reported in AIR 1976 SC 2423 (para 5 and 9).

23. Para 5 of the Judgment of State of Punjab Vs. Tarlok Singh, reported in (1972) 3 SCC 869 is quoted herein below for ready reference:

“5. First, the High Court noticed the suspicion created by the circumstance that the copy of the First Information Report purported to have been lodged at 3.45 p.m. did not reach the Magistrate at Dasuya till 8 a.m. the next day,



even though it was sent through a special messenger. The distance between the scene of occurrence & Dasuya was only 15or16 miles. The inference sought to be drawn is that, in fact, the report was not lodged at 3.45 p.m., but at a much later hour, after the police had arrived at the scene of occurrence and there were consultations to decide what version should be put forward and who should be implicated for the murder. The prosecution, in fact, made no attempt to explain this delay. Such delay, thus, casts doubt on the prosecution version that the Report was lodged at 3.45 p m. without lapse of unnecessary time.”

24. Para 5 and 9 of the judgment of Ishwar Singh Vs. the State of Uttar Pradesh, reported in AIR 1976 SC 2423 are quoted herein below for ready reference:

5. Mr. Frank Anthony appearing for appellant Ishwar Singh submitted that in affirming the Judgment of the trial Court, the High Court also overlooked certain important aspects of the case that the Sessions Judge had failed to consider. He pointed out that the F.I.R. which is stated to have been lodged at 9.05 A. M. on February 14, 1973 was sent out from the police station the next day, February 15; the time when it was despatched is not stated, but it



appears from the record that the Magistrate received it on the morning of February 16. The Court of the Magistrate was nearby, which makes it difficult to understand why the report was sent to him about two days after its stated hour of receipt at the police station. Section 157 of the CrPC, 1898 as well as of 1973 both require the first information report to be sent "forthwith" to the Magistrate competent to take cognizance of the offence. No explanation is offered for this extraordinary delay in sending the report to the Magistrate. This is a circumstance which provides a legitimate basis for suspecting, as Mr. Anthony suggested, that the first information report was recorded much later than the stated date and hour affording sufficient time to the prosecution to introduce improvements and embellishments and set up a distorted version of the occurrence. In this case the suspicion hardens into a definite possibility when one finds that the case made in Court differs at least in two very important particulars from that narrated in the F.I.R. Mahabir Singh, who lodged the first information report, stated in-Court that he had invited some people to his house to effect a settlement between him and Ishwar Singh, and that he had also sent Ghanshyam to call Ishwar Singh there. The F.I.R. does not mention anything like this. From the F.I.R. it appears as



if the accused persons came uninvited to his house, demanded why he had demolished the drain, and started assaulting him and the other persons who were present there. It is also difficult to understand why Mahabir should invite anyone to his house for a settlement, if really Ishwar Singh had permitted him to demolish the drain as he claimed. Further, the F.I.R. does not mention that Mahabir and Satyapal wielded lathis in their defence when attacked and that this resulted in some of the accused getting injured; but that is what both Mahabir (P.W. 1) and Satyapai (P.W. 2) stated in their evidence in Court. These variations relate to vital parts of the prosecution case, and cannot be dismissed as minor discrepancies. In such a case, the evidence of the eye-witnesses "cannot be accepted at its face value", as observed by this Court in *Mitter Sain v. State of U.P.*

9. We have pointed out that the trial Court in convicting the appellants overlooked certain significant features of the case, namely, the inordinate and unexplained delay in despatching the first information report to the Magistrate; the difference in the account given by the prosecution witnesses and as appearing from the first information report of the occurrence; the absence of any statement in the



first information report as to the injuries received by some of accused, and the non-examination of material witnesses. The High Court in affirming the Judgment of the trial Court also failed to advert to these circumstances. We do not therefore think that the case against the appellants has been proved beyond reasonable doubt. The appeals are accordingly allowed and the Order of conviction and the sentences passed on the appellants are set aside We direct that the appellants be set at liberty forthwith.”

25. On analysis of the materials on record, we find that when the prosecution has disbelieved the case as per the F.I.R., which was lodged at the instance of the S.D.O., Sitamarhi (West), when all the accused persons named in the F.I.R. were acquitted in the case including those, who were arrested on the spot involved in commission of arson loot etc., the conviction of these appellants, who were even not named in the F.I.R. at the instance of the witnesses, who have deposed in this case and disclosed the name of these appellants for the first time after inordinate delay of 2-3 weeks of the incident, the conviction of the sole appellant Sakal Mahto on the testimony of child witness (P.W.1), aged about 12 years, with so many discrepancy in his version and on the version of the investigating officer variance in the matter of recovery of dead body



and the doubtful situation of identification while hiding in the paddy field and on account of the fact that he has seen the appellant Sakal Mahto, residents of different village once without disclosing the manner of acquaintance so that he could identify Sakal Mahto by name is most difficult to digest particularly when we find variance in his deposition before the Magistrate under Section 164 of the Cr.P.C. and deposition before the Court other than this witness, there is no eye witness to claim that he has seen Sakal Mahto involved in the commission of the crime.

26. We are in agreement with the submission of Mr. Prasson Sinha on the point of the major contradiction with version of prosecution as to who has drawn the fardheyman and the most crucial unexplained mystery in the version of P.W.2 that dead body of Islamul was taken by them to their residence and from their residence dead body was taken for post-mortem, how the prosecution story remained unexplained as to how the dead body was found at Sareh as per inquest report at 2.30 P.M. and the deposition of investigating officer. This major contradiction in the prosecution case renders the prosecution case under serious doubts.

27. Thus, in the totality of the facts situation, where out of 64 witnesses, 41 witnesses were tendered and the deposition of P.W.1 and P.W. 2 runs contrary to the materials on record as to the



manner of identity of sole appellant by name, who is not the residents of the same village nor there is any specific material placed by the prosecution as to how P.W.1 could be able to identify the sole appellant by name only on account of the fact that he has seen once this appellant. There is no explanation as to how he (P.W.1) could identify the accused by name, who has introduced him by name to this P.W.1 so that he could be able to identify the appellants Sakal Mahto by face and name and considering the entire materials on record, we are of the considered view that identification of the appellant Sakal Mahto involved in the commission of crime on the testimony of P.W.1 is not reliable and trust worthy.

28. Accordingly, we are of the considered view that the sole appellant Sakal Mahto of Cr. Appeal (DB) No. 20 of 1994 deserves the benefit of doubt.

29. So far as the appellants of Cr. Appeal (DB) No. 07 of 1994 are concerned, in the totality of the facts situation it is not save to convict them even for the offence under Sections 325, 437/149 and 147 and 188 of the Indian Penal Code, as they were neither named in the F.I.R. nor they were found and caught in the actual activities of riot, arson loot at the place of occurrence, even the person who were named in the F.I.R. and the person apprehended on the spot in actual commission of the crime were not even charge-sheeted and



as such conviction of the appellants in the instant case suffers from vice of non-appreciation of the materials in its proper perspective. Accordingly, their appeal is allowed and they are extended the benefit of doubt in communal riot where 150-200 persons were allegedly involved in the commission of crime.

30. Accordingly, we allow both the appeals and set aside the judgment of conviction and order of sentence dated 22.12.1993. All the appellants are on bail, they are discharged from the liabilities of their bail bonds.

(Rajendra Menon, CJ)

(Anil Kumar Upadhyay, J)

Uday/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	28.11.2017
Transmission Date	28.11.2017

