

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.226 of 2011

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Jai Prakash Singh, son of late Sri Ram Singh, resident of village- Nadiawan, P.S.& District- Lakhisarai.

.... Appellant

Versus

The State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr.

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH

and

HONOURABLE MR. JUSTICE ARUN KUMAR

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH)

Date: 02-03-2017

The present appeal has been preferred by the sole appellant Jai Prakash Singh against the judgment of conviction, dated 01.03.2011 and order of sentence, dated 03.03.2011 passed by the learned Additional District and Sessions Judge, F.T.C.-II, Lakhisarai in Sessions Trial No. 35 of 2007, by which the appellant has been convicted and sentenced to undergo life imprisonment under Section 302/34 of the Indian Penal Code along with a fine of Rs. 10,000/- and for offence under Section 201/34 of the Indian Penal Code, sentenced him to undergo rigorous imprisonment for five years with a fine of Rs. 5000/- and in default of payment of fine, to undergo further imprisonment for a period of six months. However, all the sentences were directed to run concurrently.



2. The prosecution case, in brief, as made out in the *fardbeyan* of Nageshwar Singh @ Nago Singh (PW-4), resident of village- Nadiyawan, P.S.- Lakhisarai (Ramgarh Chawk), Lakhisarai, recorded by S.I. Harendra Singh, Officer-in-charge of Ramgarh Chawk P.S. at the door of Nago Singh at village- Nadiyawan on 12.06.2006 at 12.30 hours, is as follows:

(a) The informant stated that on 11.06.2006 at about 9:00 P.M., his son, aged about 22 years, had gone to the house of his cousin Awanish Singh for sleeping on the roof top. The informant along with his wife Gayatri Devi (PW-1) and daughter Bandana Devi (PW-3) were talking with each other at the door of their house. At about 10:00 P.M. in the night, Ojha Singh, Jai Prakash Singh, Dayanand Singh, Gudumb Singh, all residents of village- Nadiyawan, P.S.- Lakhisarai (Ramgarh Chawk) armed with rifles arrived at the door. Ojha Singh enquired about Nilesh and on this, informant's wife, while stating that he is sleeping, asked him, what is the matter? Thereupon, Ojha Singh stated that boss has called him. On hearing the conversation, all by himself, Nilesh came down from the roof. Thereafter the accused persons took him along with them. In the meantime, Ledahu Singh also came armed with rifle and he too accompanied them. The informant's wife again enquired, as to where they are taking her son in the night. Ojha Singh again replied in the



same term that boss is calling. Nilesh tried to calm down his mother stating that nothing would happen. However, as the accused persons had come with rifles, the informant along with his wife and daughter followed them and were also pleading to free his son. The accused persons, without heeding to the request, took him north-west to the field of Ram Prakash Sharma, where Ojha Singh tied Nilesh to an electric pole with *Gamchha*. While instigating others to fire, Ojha Singh himself fired first at the deceased with his rifle. Soon thereafter, Dayanand Singh, Gudumb Singh and Jai Prakash Singh also fired one shot each at the deceased Nilesh. Dayanand Singh and Ojha Singh again fired one shot each again. The accused persons then untied the deceased from electric pole and dragged him by pointing rifle at the informant. Thus, the accused in total shot at him as many six times. The accused persons then hid the dead body in the river side.

(b) In the night itself, the informant narrated the incident to a number of villagers, but none tried to apprehend the accused due to fear. In the morning, after taking all precaution, the informant went to Police Station. Earlier, in the night, the informant had gone to the local telephone booth to inform the police, but no one got up and as such no information could be given to the police in the night. The informant claims that a number of villagers had witnessed the occurrence, who could narrate the incident. After hectic search, the dead body was



recovered from a bush by the bank of the local river.

(c) The informant claims that Ojha Singh, Jai Prakash Singh, Dayanand Singh, Gudumb Singh and Ledahu Singh, with a common intent, have killed his son by fire arms and had also tried to hide the dead body.

3. On the basis of the fardbeyan, the police instituted Lakhisarai P.S.Case No. 220 of 2006 dated 12.06.2006 under Sections 302/201/34 of the Indian Penal Code and Section 27 of the Arms Act.

4. The police in course of investigation, inspected all the three places namely, the door of the informant, field of Ram Prakash Sharma (PW-3) and the electric pole to which the deceased is said to have been tied and shot, the bush on the bank of the river from where the dead body was recovered. He prepared the inquest report and sent the dead body for postmortem. The doctor (PW-5), who conducted the postmortem, found as many as five entry wounds on the person of the deceased, excluding one lacerated wound. According to the doctor, the death was caused by fire arms injuries. The time elapsed since death recorded by the doctor tallied with the time of occurrence mentioned in the FIR.

5. During investigation, Jai Prakash Singh (the appellant) surrendered and the police, after completion of investigation, submitted charge against him, while keeping the investigation pending



against the accused, who were absconding. Learned Magistrate took cognizance of the offence and committed the case to the court of sessions. Charges were framed under Sections 302/34 and 201/34 of the Indian Penal Code against the sole appellant to which he pleaded not guilty and claimed to be tried.

6. The case of defence, as appearing from the mode of cross-examination as well as their statement under Section 313 Cr.P.C. is one of false implication and that the deceased was a criminal and has been killed by some of his associates.

7. The trial court, relying upon the evidence of the prosecution witnesses, mainly the informant Nageshwar Singh @ Nago Singh (PW-4), Gayatri Devi (PW-1), Bandana Devi (PW-2), who have claimed to be the eye witness and also the medical evidence, convicted the appellant under Sections 302/34 and 201/34 of the Indian Penal Code.

8. The prosecution, in support of its case, has examined 07 witnesses, who are (1) Gayatri Devi as PW-1, (2) Bandana Devi as PW-2, (3) Prakash Sharma as PW-3, (4) Nageshwar Singh @ Nago Singh as PW-4, (5) Dr. Parshuram Prasad as PW-5, (6) Amarkant Singh as PW-6 and (7) Harendra Singh as PW-7.

9. Out of these 07 witnesses, Nageshwar Singh (PW-4) is the informant and father of the deceased, Gayatri Devi (PW-1) is the



mother of the deceased, Bandana Devi (PW-2) is the sister of the deceased, Amarkant Singh (PW-6) claimed to have seen the accused persons, armed with rifles, taking away the deceased Nilesh Kumar at about 10:00 P.M. in the night. Prakash Sharma (PW-3) is a hearsay witness. He stated that he learnt about the incident from PW-1, PW-2 and PW-4, who are the family members of the deceased. PW 5 is the doctor who had conducted the postmortem on the dead body of the deceased on the same day i.e., 12.06.2006 at 6:00 P.M. Harendra Singh (PW-7) is the Investigating Officer of the case who has submitted charge sheet against the appellant.

10. Gayatri Devi (PW-1) stated that on the relevant night at about 10:00 PM, she was talking with her husband and daughter at the door and about that time, accused persons, namely, Ojha Singh, Jai Prakash Singh, Dayanand Singh, Gudumb Singh and Ledahu Singh appeared with rifles and enquired about Nilesh Kumar, whereupon this witness stated that the latter (Nilesh) is sleeping and as to why they are looking for him at such odd hours. However, on hearing the conversation, Nilesh came down on his own, whereafter accused persons carried him with them. She along with her husband (PW-4) and daughter (PW-2) followed them as she suspected something foul as accused persons had fire arms. The accused persons took her son to the field of Prakash Sharma, where Ojha Singh tied his son to an



electric pole with his *Gamchha*. On the instigation of Dayanand Singh, all the accused persons shot at him. When the informant and others tried to save, the accused persons threatened them by brandishing their arms which forced them to retreat. Thereafter, she along with her husband and daughter narrated the incident to the local villagers. The police later on recovered the dead body from the bush near the bank of the local river.

11. Bandana Devi (PW-2) and Nageshwar Singh @ Nago Singh (PW-4) (the informant) have reiterated the prosecution case as stated in the F.I.R.

12. As noticed earlier, PW-6, Amarkant Singh, the other brother of the informant, is the witness to first part of the occurrence, when the accused persons had come at the door of the informant armed with rifles and were taking the deceased Nilesh along with them at 10:00 PM in the night.

13. The police, in course of investigation, found copious blood near the electric pole to which he was tied and shot dead by the accused persons. The police also recovered blood stained *Gamchha*, with which the deceased was tied by Ojha Singh. The police recovered the dead body from the bush by the bank of the river and thereafter took the *fardbeyan* of the informant at his residence at about 12:30 PM in the noon.



14. Learned counsel appearing on behalf of the appellant has assailed the impugned judgment of conviction and sentence on a number of grounds. He submits that the prosecution case, as stated in the FIR is not worthy of credence as though informant (PW-4) met the police at 8:00 A.M. on 12.06.2006, still he did not get his *fardbeyan* recorded, which was recorded only at 12:30 PM on recovery of the dead body from a bush at the bank of the river. Furthermore, the *fardbeyan* recorded at the house of the informant too becomes doubtful in view of the evidence of PW-4 at para-10, where he stated that the police took his statement at the place of occurrence, which would be field of Prakash Sharma (PW-3). He also submits that the informant does not seem a truthful witness, as in *fardbeyan*, he stated that just after the murder of his son, he informed the local villagers about the occurrence, whereas in para-24 of his evidence, he stated that he neither raised *hulla* nor anyone heard *hulla*.

15. He further submits that the Investigating Officer did not find blood stains on the electric pole though the deceased was shot dead while he was tied to it with *Gamchha*. He submits that in such situation, it would be, but natural that there would be some splash of blood on the electric pole. It was also argued that PW-2, Bandana Devi, could not be an eye witness as she had witnessed the occurrence from a distance of about 2 KM. Furthermore, her earlier statement on



which she has put her signature has been purposefully withheld. Similarly, evidence of PW-1 be discarded from consideration as in para-13, she stated that the accused persons went on to the roof of the Awanish Singh from where they brought down Nilesh and carried him, which is not the case of the prosecution in the FIR. Besides this, the Investigating Officer in his evidence stated that on telephonic information, he recorded a Sanha, however, the prosecution has withheld the said Sanha and has not produced the same in the court. He lastly submitted that the deceased himself was a member of a criminal gang and was eliminated by other criminals and the appellant has falsely been roped in this case on account of village politics.

16. On the other hand, learned counsel for the informant as well as learned counsel for the State has defended the impugned judgment of conviction and order of sentence passed against the appellant. They submit that, save and except, some minor discrepancies, PW-1, PW-2 and PW-4 have fully supported the prosecution case. They state that blood in large quantity was found near the electric pole in the field of Prakash Sharma, where the deceased was said to have been shot as many as 06 times. The *Gamchha*, with which the deceased was tied, was also seized, on which blood was found. The inquest report and the postmortem report also support the prosecution case. They, however, submit that the



Investigating Officer ought to have recorded the *fardbeyan* of the informant when he approached the Thana at about 8:00 AM in the morning instead of recording the same at 12:30 noon after four hours, but on account of laches on the part of the investigating officer, the prosecution case should not be disbelieved when PW-1, PW-2 and PW-4 have fully supported the case and PW-3 and PW-5 have corroborated the same.

17. We would now examine the points raised by the appellant.

18. one of the arguments of learned counsel for the appellant is that the informant did not disclose the names of the accused persons to the villagers or did not get recorded his *fardbeyan* soon after the occurrence though he had reached Thana on 12.06.2006 at 8:00 A.M. in the morning. It is the further case of the defence that only after four hours, when the dead body was recovered from a bush at the bank of the river, the *fardbeyan* was given so that the version may tally with the injuries found on the person of the deceased.

19. The argument of the learned counsel for the appellant seems attractive at first instance, but on a careful scrutiny of the evidence, we find that non-recording of *fardbeyan* at 8:00 A.M. in the Thana would not render the prosecution case unworthy when the prosecution case, as narrated by PWs 1, 2 and 4, is consistent right



from the very beginning of the occurrence till its end. The presence of these three witnesses cannot be doubted as they are natural witnesses being father, mother and sister of the deceased, who were present at the house, when the accused persons came and took the deceased with them in their presence.

20. We also find that the Investigating Officer, in para-13 of his evidence, admitted that as per information given by the informant (PW-4) and some villagers regarding commission of murder, he went straight to the second place of occurrence, where the murder was committed and not to the first place of the occurrence i.e., the house of the informant from where deceased was carried by the accused in the night. All these evidences would itself demonstrate that the informant had already stated about the occurrence to the Investigating Officer and it was sheer laches on his part, not to record the same.

21. In the case of ***Ranjeet Kumar Ram & Ors. vs. State of Bihar*** reported in ***2015 CriLJ 2944***, the Hon'ble Apex Court observed that a prosecution case cannot be discarded ought-rightly if some laches have been committed by the Investigating Officer, if the evidence otherwise inspires confidence. It is true that there are some discrepancies in the statements of the witnesses, but such minor discrepancies would not go to the root of the prosecution case in face



of consistent evidence that the son of the informant was killed in brutal manner by the accused.

22. One of the foremost submissions of the appellant is that not finding of blood on electric pole would falsify the prosecution case that deceased was shot, while tied to the pole by *Gamchha* as it is consistent case of prosecution that the deceased was shot at, as many as six times, while being tied to the pole. The submission of the appellant could have carried weight, if no blood had been found by the Investigating officer near the electric pole or on the *Gamchha* with which the deceased was tied. In such a situation, not finding of blood on the electric pole would not be fatal to the prosecution case as the eye witnesses have consistently stated that he was fired upon while being tied to the pole.

23. The other submission of the learned counsel for the appellant that PW- 1, PW-2 and PW-4 did not raise *hulla* when the deceased was being carried by the accused persons. There could be various reasons for not raising *hulla*, as one of the apprehensions could be that raising of *hulla* may provoke the accused persons who were armed with rifles to kill deceased instantly closing all hopes of survival for which there could be an outside chance, as good sense may prevail upon them. It is another matter that the accused persons eventually killed him.



24. In the result, we do not find any ground to interfere with the judgment of conviction and order of sentence recorded by the trial court. The appeal as such fails. The appellant would remain in custody to serve remaining part of the sentence after setting of permissible remission.

(Samarendra Pratap Singh, J)

(Arun Kumar, J)

Sujit/-

AFR/NAFR	NAFR
CAV DATE	
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