

IN THE HIGH COURT OF JUDICATURE AT PATNA

(Against the judgment of conviction, dated 27.07.2011, and order of sentence, dated 03.08.2011, passed by Sri Harindra Nath, learned Additional Sessions Judge, F.T.C.-V, Kaimur at Bhabua in Sessions Trial No. 242 of 1995 / 38 of 1995, arising out of Bhagwanpur P.S. Case No. 94 of 1994)

Criminal Appeal (DB) No.1025 of 2011

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Gyani Paswan, Son Of Late Ganesh Paswan, Resident of Village- Dewanpur, P.S.- Bhagwanpur, District- Kaimur

.... Appellant

Versus

The State of Bihar

.... Respondent

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Appearance :

For the Appellant/s : Mr. Prabhakar Singh, Advocate
: Mr. Neeraj Kumar @ Sanidh, Amicus Curiae
For the Respondent/s : Mr. Mr. Ashwani Kumar Sinha, APP

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CORAM: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH

And

HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH)

Date: 29-06-2017

This appeal has been preferred against the judgment of conviction, dated 27.07.2011, and order of sentence, dated 03.08.2011, passed by learned Additional Sessions Judge, F.T.C.-V, Bhabua in Sessions Trial no. 242 of 1995 / 38 of 1995, arising out of Bhagwanpur P.S. case no. 94 of 1994, by which the appellant has been convicted under Sections 302/149 read with Section 302 of the Indian Penal Code, 384/149 of the Indian Penal Code and 27 of the Arms Act. For the offence under Sections 302/149 read with Section 302 of the Indian Penal Code, the appellant has been sentenced to



undergo life imprisonment and a fine of Rs. 25,000/- and in default to undergo R.I. for six months. For the offence under Section 384/149 of the Indian Penal Code and 27 of the Arms Act, the appellant has further been sentenced to undergo R.I. for one year, each, under both counts. However, all the sentences were directed to run concurrently.

2. The prosecution case, in short, as made out in the statement of one Anandi Devi (P.W.8), wife of Baban Pandey recorded on 28.08.1994, at 12.30 P.M., at her courtyard in village Dabanpur, P.S. Bhagwanpur, District Kaimur, recorded by Hridaya Narayan Singh, officer-in-charge of Bhagwanpur Police Station, is as follows:

(i) The informant stated that on 28.08.1994, at about 9.00 A.M., while she was sitting in the courtyard of her house and her father-in-law Fulan Pandey, husband Baban Pandey, sons Dhananjay Pandey and Mritunjay Pandey were at the Darwaja along with Jag Narayan Deuby, 10 to 20 persons suddenly came there and took them captive. Hearing, some sound, the informant closed the main door and went upstairs on the roof along with her Gotani (sister-in-law) Bigna Devi and her daughters, Renu Kumari and Kabita Devi, and also gun and cartridges. She saw the appellant and others, all residents of the same village, armed with rifles and unlicensed guns. All of them were wearing khaki uniform, like policemen. There were others too



similarly dressed, whom she did not know, but could identify. They took Fulan Pandey and others towards west, near the window. Sripati Dusadh then demanded gun and the cartridges giving threat that if she did not agree, they would be killed. The informant was not willing to give gun and cartridges. The accused remained standing for half an hour in the hata (compound) in front of the window, keeping the five of the family members captive. Finally, under pressure Fulan asked the informant to hand over the gun and the cartridges lest they would be killed. She dropped the gun and cartridges in the western hata. Bharat Dusadh picked them. At that time, Dadan Pandey (younger brother of Baban Pandey i.e. dewar of the informant) was away to a relative's place with his rifle. Sripati Dusadh and Rameshwar Pandey were saying that their real enemy, meaning thereby Dadan Pandey, had fled away. Thereafter, the accused took all the five victims towards south along with gun and cartridges. The informant and others raised alarm, but none came to their rescue. After some time they heard sound of 15-16 gun shots. Later, they came to learn that the accused persons had killed all the five victims in the orchard, after tying them to a tree. The informant stated that the cause of occurrence was enmity on account of land dispute.

(ii) On the basis of the Fardbeyan of the informant, Bhagwanpur P.S. Case No. 94 of 1994, dated 28.08.1994, was



registered for the offences under Sections 396 and 120B of the Indian Penal Code and 27 of the Arms Act.

3. The police in course of investigation recorded further statement of the informant and statement of Renu Kumari, Kavita Devi and Bigna Devi, inspected the place of occurrence, prepared inquest report, seizure list with respect to an empty cartridge and blood stained soil. The investigation of the case was made over to Inspector Naresh Kumar Singh on 28.08.1994 itself, at the place of occurrence. Naresh Kumar Singh sent the dead body for post-mortem, recorded the statements of, amongst others, Sanjay Kumar Pandey, Kalamuddin, Deo Muni Choudhary and Dadan Pandey. After completion of investigation, the police submitted charge-sheet under Sections 396, 120B of the Indian Penal Code and 27 of the Arms Act against the appellant and 12 others.

4. On receipt of the charge-sheet, learned Magistrate took cognizance of offence and committed the case to the Court of Sessions for trial. Charges were framed under Sections 302/34, 120B, 364,384/34 of the Indian Penal Code and 27 (iii) of the Arms Act against all the 13 accused persons including the appellant, to which they pleaded not guilty and claimed to be tried.

5. The prosecution, in order to substantiate its case, examined as many as 12 witnesses. P.W. 1 is Sanjay Kumar Pandey,



P.W.2 is Lala Ram. P.W. 3 is Kalamuddin. P.W.4 is Dadan Pandey. P.W.5 is Renu Kumari. P.W. 6 is Kavita Kumari. P.W. 7 is Bigna Devi. P.W. 8 Anandi Devi is the informant of the case, P.W. 9 is Ranjeet Kumar, P.W.10 is Hriday Narayan Singh, P.W. 11 Naresh Kumar Singh is the investigating officer of the case. P.W.12 is Rama Kant Tiwari.

6. It is relevant to state here that soon after examination of 09 witnesses, the last on 24.08.1997, the appellant escaped from the police escort on 19.11.1997 and his case was separated on 06.12.1997. In the meantime, the trial against rest 12 accused persons proceeded vide Sessions Trial No. 242 of 1995 / 5 of 1999. In the aforesaid trial, the trial court examined three more witnesses, namely, P.W.10 Hriday Narayan Singh, P.W.11 Naresh Kumar Singh (2nd investigating officer of the case) and P.W.12 Rama Kant Tiwari, who is a police personnel (formal in nature).

7. The learned trial court on consideration of materials on record while acquitting four accused persons, namely, Toofani Paswan, Rampati Paswan, Shri Krishna Pandey and Dharmdeo Pandey, convicted 8 accused persons, namely, Vishambhar Pandey, Rameshwar Pandey, Ramkeshwar Pandey, Bahadur Gond, Prahlad Paswan, Rajgrhi Paswan, Dukhanti Paswan and Bharath Paswan under Sections 302/149 read with 302 and 384/149 of the Indian Penal



Code and 27 of the Arms Act.

8. Being aggrieved, the convicted accused filed two appeals, bearing Cr. Appeal (DB) No. 455 of 1999 and Cr. Appeal (DB) No. 464 of 1999. The State of Bihar too filed Government Appeal, being Government Appeal (DB) No. 20 of 1999 against the judgment of acquittal of four accused persons, put on trial. The Division Bench vide its judgment, dated 18.07.2003, upheld the judgment of conviction and acquittal passed by the trial court, which remained unaltered up to the Hon'ble Apex Court as well.

9. Coming back to the case of the appellant. The appellant was again remanded in this **case on 30.08.2005 only, but escaped once again from the Court Hazat on 04.11.2009**. He was later on apprehended and again remanded in this case on 24.06.2011. After apprehension of accused-appellant, the trial court once again proceeded against him. The accused in his statement under Section 313 of Cr.P.C. has completely denied his involvement in the crime. He stated that he was not present at the place of occurrence on the relevant date.

10. The appellant examined five witnesses in support of his plea of alibi. D.W.1 is Haridwar Prasad, D.W. 2 is Jawahar Singh, D.W.3 is again Haridwar Prasad, D.W.4 is Vijay Pratap Singh and D.W.5 is Lal Mohan Ram. Out of these five witnesses, D.W.1 and



D.W.3 are formal in nature.

11. The Court also examined two witnesses, namely, C.W.1 Deo Muni Choudhary and C.W.2 Jethu Choudhary, who have supported the prosecution case.

12. The learned trial court on consideration of materials on record convicted the appellant under Sections 302/149 read with 302 and 384/149 of the Indian Penal Code and 27 of the Arms Act.

13. The issue before this Court for consideration is whether the prosecution has been able to prove the case against the appellant beyond all reasonable doubt. It is relevant to state here that the prosecution has relied upon P.W.1 to P.W.9, who were examined in presence of this appellant. P.W.1 Sanjay Kumar Pandey is the son of the informant, who has claimed to have seen the actual commission of murder of five persons, at the hands of the appellant and 12 others, out of whom 8 were named and 4 unknown. P.W.2 Lala Ram is co-villager, who has turned hostile. P.W.3 Kalamuddin is an employee of the family of the deceased and P.W. 4 Dadan Pandey is the brother of one of the deceased (both P.W.3 and 4 are hearsay witnesses). P.W.5 is Renu Kumari. P.W. 6 is Kavita Kumari. P.W. 7 is Bigna Devi. P.W. 8 Anandi Devi is the informant of the case and she has supported the prosecution case. P.W. 5, P.W. 6 and P.W. 7 are the other family members of the house, who too have supported the prosecution case,



as narrated in the F.I.R. by the informant (P.W.8).

14. Counsel for the appellant being conscious of the fact that conviction of 8 other named accused persons, similarly situated, has been upheld up to the Hon'ble Apex Court, found it to be a hard task to assail the judgment of conviction and order of sentence passed against the appellant. However, Mr. Neeraj Kumar @ Sanidh, learned Amicus Curiae, submits that this is a case of last seen and even assuming the prosecution case to be true, P.W.5 to P.W.8 have not seen the actual occurrence. He further submits that the only eye witness, as per the prosecution case, would be one Sanjay Kumar Pandey (P.W.1), who cannot be held reliable, as after seeing the actual occurrence of commission of murder, did not rush to the house to inform the inmates about the incidents, rather he traveled to another village Dili, where Dadan Pandey (P.W.4) was residing. He further submits that P.W.4 is also a hearsay witness. He submits that it is a case of last seen and, as such, very humbly submits that it may not be safe to sustain the conviction on the testimony of the four inmates, who had only seen dragging the five members of their family, towards the orchard, where they have been alleged to have shot dead.

15. On the other hand, Mr. Ashwani Kumar Sinha, learned Additional Public Prosecutor appearing for the State, has defended the judgment of conviction and order of sentence passed by



the learned trial court. He submits that the case of the appellant is not different than the case of other 8 convicts, whose conviction has been sustained up to the Hon'ble Apex Court under Section 302/149 read with Section 302 as well as Section 384/149 of the Indian Penal Code and 27 of the Arms Act. He submits that the post-mortem report supports the prosecution case that the accused persons shot dead the family members of the informant by fire-arm. The time mentioned in the post-mortem report also tallies with the time mentioned in the prosecution case.

16. We have heard the counsel for the parties. We are in agreement with the submission of learned counsel for the State that the case of the appellant is not only similar, but same, as that of 8 appellants, whose conviction has been sustained up to the Hon'ble Apex Court. The informant in her evidence reiterated the prosecution case that 15-20 accused persons variously armed came to the door of her house and took five male members of her family in their captivity. They initially asked for arms and ammunitions, which the family members surrendered to the accused persons on the hope that they would spare them. However, two accused persons after taking arms and ammunitions, instead of releasing the male members dragged them in the orchard. Soon thereafter a number of gun shots were heard and the family members of the informant were found dead, butchered



with fire-arm injuries. The evidence of other inmates, namely, P.W.5, P.W.6 and P.W.7, are to the same effect. The time lag between taking the victims in captivity and their murder is minimal, to come to a conclusion that anyone else other than the accused may not have shot dead. Even the defence has not brought any concrete materials that some else had killed them in the meantime.

17. Situated thus and in view of the discussions made above, we do not find any merit to interfere with the judgment of conviction and order of sentence passed against the appellant by the learned trial court. Accordingly the judgment of conviction and order of sentence passed against the appellant is upheld. The appellant, who is in custody, would remain in jail to serve out the remaining part of his sentence.

18. This appeal stands dismissed.

(Samarendra Pratap Singh, J.)

(Prakash Chandra Jaiswal, J.)

Uday/-

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