

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.396 of 1995

**Arising out of judgment and order dated 20.11.1995 passed by learned
2nd Additional Sessions Judge, Aurangabad in Sessions Trial No.
275/94/64/94**

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Musafir Paswan, son of Ramdeni Paswan of village Basari, Tolla
Barbigaha, P.S. – Dhibra, District – Aurangabad.

.... Appellant

Versus

The State of Bihar

.... Respondent

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Appearance :

For the Appellant : Mr. Ram Hriday Prasad, Advocate

For the State : Mr. S.B. Verma, A.P.P.

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CORAM: HONOURABLE THE CHIEF JUSTICE

And

HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date: 27-03-2018

Heard learned counsel for the sole appellant and
learned Additional Public Prosecutor for the State.

2. This criminal appeal has been preferred by the
sole appellant for setting aside the judgment and order of
conviction dated 20.11.1995 passed by the learned 2nd
Additional Sessions Judge, Aurangabad (hereinafter referred



to as the “learned Trial Court”) in Session Trial No. 275/1994/64/1994 by which the learned Trial Court has been pleased to hold the appellant guilty for the murder of one Naurang Prasad Singh and accordingly convicted him under Section 302/149, 120B of the Indian Penal Code (for short the ‘IPC’). The appellant has been sentenced to undergo imprisonment for life under Section 302/149 IPC. No separate sentence has been passed for the offences under Section 120B IPC.

3. From the narration of the prosecution case as appearing from the records of the trial court, it appears that one Daulti Devi (P.W.8) is the informant who alleged that in the night of 20th day of July, 1993 at about 8.00 p.m. while she was serving dinner to her husband Mukhiya Naurang Prasad Singh in the courtyard (*Aangan*) of her house at village Kolhaira, P.S. - Deo (Dhibra) in the district of Aurangabad, she heard a call from the outside to open the main door. The southern door was knocked. She enquired about the person who was asking to open the southern door. On query, the people outside replied that they are the brothers. At the same time, she heard from the north side door there was a



voice to open the door, the informant identified the voice of this appellant Musafir Paswan and advised her husband to go on the roof of the house and flee away. It is further stated that when the husband of the informant went on the roof then she opened the north side door, as soon as she opened the door Musafir Paswan (the appellant) alongwith other 10 persons entered inside the house and called for the Mukhiya. On this, the informant told them that the Mukhiya had gone outside. On hearing this, Musafir Paswan (the appellant) pushed her with some iron made things and asked her to save otherwise she would be killed. It is alleged that some of the persons were searching for her husband while damaging the *Kothi* which is used for storage of food-grains. They damaged the food-grains and scattered the articles and lastly fled away with a box containing all the papers concerning land, cloths and one silver chain. It is alleged that when the miscreants left the home, she heard 4-5 rounds of firing and whistle was blown from outside. On hearing the whistle, the miscreants came out of the house of the informant. It is alleged that miscreants also gave the slogans '*Inkelab*' before leaving the house.



4. It is further alleged that when the villagers started search for the husband of the informant, he could not be found in the night hours but in the morning his dead body in a damaged condition and soaked in blood was found at a distance of 100 yards east to the house in the field. The informant explained that the face of her husband was smashed. The stomach was torn and the intestines have come out. The cause of occurrence as stated in the fardbeyan is that her husband had purchased 30 bighas of land of *Math* at village *Basari* and for that there was a litigation and enmity with accused Musafir Paswan (the appellant).

5. It is further stated in the fardbeyan that a few days before the murder of Naurang Prasad Singh he had given a sheet of paper to the informant mentioning the name of accused persons and some other and he had also informed to his wife that he was apprehending his murder in the hands of these persons. The informant produced a sheet of paper as Exhibit 4/1 written by Naurang Prasad Singh where the names of these persons were simply written. However, the fact of having apprehension to be murdered was orally stated to the informant. The informant had also claimed to identify the



accused persons who were not named by her in the fardbeyan.

6. Upon investigation, police submitted a charge-sheet against altogether 12 accused persons, who were ultimately charged for committing offences punishable under Section 302 read with 148 and Section 120B of the IPC. In addition to that accused-appellant Musafir Paswan further stood charged for the offence punishable under Section 27 of the Arms Act.

7. In course of trial, altogether 10 prosecution witnesses were brought before the trial court, which included the informant (P.W.8) and Tinku Kumari (P.W.7) who happened to be the granddaughter of the deceased and claimed to be the eye witness of the alleged occurrence. The defence case is that of denial of the allegation. The learned Trial Court found that the defence had not denied the manner of murder of the Mukhiya namely, Naurang Prasad Singh, which, according to the learned Trial Court, indicates that it was committed by MCC Extremists and the area where the murder was committed is extremists affected area. According to the defence, Naurang Prasad Singh was killed by unknown



persons, may be the MCC Extremists and the accused persons particularly Musafir Paswan has been falsely implicated due to previous enmity concerning the land particularly when the murderer of Mukhiya were not known by the prosecution side. The defence further alleged that after recovery of the dead body by the police on 21.07.1993 and after consultation with the litigant persons and taking the investigating officer in collusion the F.I.R. was fabricated in this case.

8. The learned Trial Court found that apart from 10 prosecution witnesses on behalf of the prosecution one defence witness was also produced and he was examined in part but he did not turn up for further cross examination. P.W.1 namely, Dr. Ashutosh Kumar Singh is the medical witness who held the post mortem on the dead body in the Sadar Hospital, Aurangabad on 21.07.1993. He has proved the post mortem report as Exhibit -1. He found that the whole body, tongue were tortured, right eye boll was absent and the hollow space was blood-stained. The whole neck was tied by a blood stained cloth with a knot on the right side and on removing it a ligature mark was present encircling the neck horizontally and completely below the level of thyroid,



cartilage, neck was turned on the left side. Fracture of soft left femur was found. Oblique incised wound over right side of abdomen 6"x 4" with protrusion of loops of small and large intestine was there. Ten punctured wounds over face and clotted blood was found.

9. The prosecution witness no. 10 namely, Mathura Prasad Singh, S.I. had investigated the case and has been examined. P.W.6 Satendra Prasad Singh was tendered by the prosecution. P.W.5 Lakhan Paswan was a hostile witness. P.W.7 Tinku Kumari and P.W. 9 Dolly Kumari, aged about 8 and 7 years respectively were the grand daughters of the deceased who had seen the occurrence and supported the prosecution case together with P.W.8 Daulti Devi (the informant). They claimed to be the eye witnesses to the occurrence as stated in the F.I.R.

10. P.W.2, Deo Lakhan Singh and P.W.3 Ram Lakhan Singh both the sons of Bhikhamdeo Singh and P.W.4 Bhikhamdeo Singh are the witnesses who have stated that they had gone to the house of the informant in the night of the occurrence after departure of the miscreants.

11. The learned Trial Court found that the



fardbeyan of the informant had been fully corroborated by P.W.7 aged about 8 years. She was reading in the courtyard (*Aangan*) with P.W.9 her sister with a lantern. Her grandmother was serving dinner to her grandfather when the miscreants arrived and knocked the door. They have given the complete details of the occurrence. They identified Musafir Paswan (the appellant), Kedar Singh and one Bhagwat Singh who was not facing trial. During her evidence P.W.7 identified the accused Musafir Paswan and Kedar Singh with their names. She also identified two accused without names who are Ramdas Paswan and Nandlal. During examination-in-chief, P.W.9 Dolly Kumari, aged about 7 years, has corroborated the evidence of P.W.7 Tinku Kumari. She further stated that she identified three miscreants, they are Kedar Singh, Musafir Paswan and Bhagat Singh. Bhagat Singh was not facing trial. She also identified accused Musafir Paswan with name in the court. Accused Sitaram Paswan was also identified by her in the dock but without name. They also claimed to identify the other accused persons who were not present but represented through their lawyer.

12. Learned Trial Court tested the evidence of



these two witnesses (P.W.7 and P.W.9) respectively on the point of identification of the accused. It was found that the identification of the accused persons who were not named by these two witnesses deserved a discussion and upon such discussion it was found that identification of the witnesses not named by these two witnesses before the police and the claim of identification of the other accused who could not be named by them has no weight and importance in the eye of law. The Investigating Officer (P.W.10) stated in course of evidence that these witnesses had not named the accused Kedar Singh in course of investigation under Section 161 Cr.P.C.

13. As regards identification of this appellant Musafir Paswan the witnesses were found consistent. The informant Daulti Devi supported the fact stated by her in her fardbeyan. She identified accused Musafir Paswan, Kedar Singh and Shankar Jee and Bhagat Jee. Shankar Jee and Bhagat Jee were not facing the trial as accused. This witness claimed that she disclosed the name of accused Kedar Singh before the police, but according to the Investigating Officer (P.W.10), she had not named the Kedar Singh, Shankar Jee



and Bhagat Jee as accused in her fardbeyan or in her subsequent statement before him.

14. In course of his evidence P.W.10 admitted that during investigation the informant had given a sheet of paper with the name of 15-16 persons written on it and a diary in the year 1993 was given to him by her which were written as Exhibit-A and B respectively by the Investigating Officer. He proved his writing over those papers as Exhibit- A & B which were marked as Exhibit-6 and 6/1 respectively.

15. The learned Trial Court discussed the entire materials including the evidentiary value of the piece of paper produced in course of trial and found that name of the accused Musafir Paswan has not only come in Exhibit 4/1A but also in the first statement of the material prosecution witnesses nos. 7, 8 and 9 about the occurrence before the Investigating Officer under Section 161 Cr.P.C. and also in their evidence in the court, so the case of accused Musafir Paswan (appellant) was found different from the rest of the accused.

16. The learned Trial Court having examined the evidence of the prosecution witnesses found that even



though the statement of Tinku Kumari (P.W.7) and Dolly Kumari (P.W.9) were recorded by the Investigating Officer on the next day when he visited second time, there was no material contradictions in the statement of these witnesses. The learned Trial Court found that the informant Daulti Devi is an illiterate rustic lady and the children are aged about 8 years and 7 years respectively, but in their statement, even though there may be minor contradictions, but those are not sufficient to disbelieve the prosecution case. The court took a view that since the first part of the occurrence took place inside the house so naturally the inmates of the house will be the witnesses and they will be the family members.

17. The learned Trial Court was also of the view that the two very minor witnesses, P.W.7 and P.W.9, were terrorized, confused and perplexed seeing the gruesome murder of their grand father and may be for that reason on the first day of visit of police they could not make their statement. But the identification of the present appellant in the light of the lantern by the persons accustomed to its light is not doubtful. The learned Trial Court believed that there is consistent evidence in support of identification of accused



Musafir Paswan by prosecution by prosecution witness no. 7, 8 and 9 in their house at the time of occurrence.

18. In these circumstances, the learned Trial Court while acquitting accused No. 2 to 12 decided to convict Musafir Paswan (the appellant) with the aid of Section 149 IPC. The trial court found that all the miscreants had common object to commit murder and in prosecution of the common object they had formed an unlawful assembly and hatched a criminal conspiracy.

19. The learned Trial Court relied upon the judgments of this court reported in **Bihar Law Judgment 1985 Page 316 (Nanu Singh & Anr. Vs. State of Bihar), BBCJ 1992 SC 155 (Munni Singh & Ors. Vs. State of Bihar), AIR 1975 SC 216 (Ravulappalli Kondaiah & Ors. Vs. State of Andhra Pradesh), Criminal Law Journal 1976 page 1158 (Bova Ganganna & Anr. Vs. State of Andhra Pradesh)** and several other judgments.

20. While assailing the impugned judgment learned counsel representing the appellant submits that there is no evidence much less any eye witness to the occurrence showing participation of this appellant in murder of the



deceased Mukhiya. It is submitted that the learned Trial Court has relied upon the evidence of P.Ws.7, 8 and 9 who are all related and cannot be said to be independent witnesses to the alleged occurrence. It is further submitted that the witnesses are not consistent as regards the narration of the manner of occurrence and they are also not consistent on the point of identification of this appellant. One of the submissions on behalf of the appellant is that because of the dispute over a piece of land, the appellant has been falsely implicated in the present case.

21. On the other hand, learned A.P.P. representing the State submits that the learned Trial Court has committed no error in appreciation of the evidences brought in course of trial. Learned Trial Court has found that P.Ws.7, 8 and 9 are consistent on the point of identification of this appellant, they had disclosed the name of this appellant to the Investigating Officer at the very first instance and had also identified the appellant in course of trial.

22. Having heard learned counsel for the appellant as well as learned A.P.P. for the State, we find that P.W.8 being an illiterate rustic lady has narrated the entire manner



of occurrence in a very simple and natural manner as she perceived and happened on the fateful night when she was serving dinner to her husband. The occurrence had taken place during the night hours when the villagers are normally gone to their respective houses for dinner and during this period if the miscreants attacked the house of the informant and called upon the inhabitants of the house to open the door, the informant is said to have identified the voice of this appellant Musafir Paswan. The defence has not been able to raise any reasonable doubt as to presence of P.W.7 and P.W.9 in the house and from the evidences which are available on the record, we find that P.W.7 and P.W.9 both had asserted that they were studying inside the house and were very much present. The defence could not get any material contradiction on this point.

23. In course of her cross examination P.W.7 has reiterated that she was studying in the Aangan when her grandfather was taking dinner and the miscreants entered. She denied the suggestion that she was giving a false statement in course of trial. Similarly P.W.9 has also withstood the cross examination without there being any



material contradiction in her statement. From the pattern of the cross examination of P.W.7 and P.W.9, we find that their presence inside the house is not doubtful. There is no material contradiction in their statements and they have withstood the cross examination very well in support of the evidence of P.W.8.

24. We do not find any reason to discard the evidences of P.Ws. 7, 8 and 9 on the manner of occurrence and the identification of the appellant. This being the position emerging from the evidence available on the record, we find that the learned Trial Court has rightly come to a conclusion that this appellant was a member of the unlawful assembly who had gone to the house of the deceased with a common object to murder him. He has, thus, been held guilty under Section 302/149 IPC as also under Section 120B of the IPC.

25. We are not inclined to interfere with the impugned judgment, the appeal is dismissed and the appellant namely, Musafir Paswan is directed to surrender in the learned Trial Court forthwith. The Superintendent of Police, Aurangabad is directed to take the appellant in custody and produce him before the learned Trial Court for



undergoing the remaining terms of life imprisonment.

26. This appeal is, accordingly, dismissed.

(Rajendra Menon, CJ.)

(Rajeev Ranjan Prasad, J.)

Rajeev/-

AFR/NAFR	NAFR
CAV DATE	NA
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