

IN THE HIGH COURT OF JUDICATURE AT PATNA

Govt. Appeal (DB) No.32 of 1995

Against judgment and order dated 27th May, 1995 in Sessions Trial No. 19 of 1987 passed by the 5th Additional Sessions Judge, Nalanda at Bihar Sharif.

=====

The State of Bihar

.... Appellant/s

Versus

1. Mohan Kurmi, Son of Shri Siya Sharan Kurmi, resident of Village Salbe, PS Nagarnausa, District Nalanda
2. Ganauri Kurmi son of Shri Gyan Kurmi
3. Arbind Kurmi
4. Krishna Kurmi – All sons of Shri Shivdhari Kurmi, Serial No. 2 to 4 are residents of village Bhadrudih, PS Nagarnausa, District Nalanda
5. Kailash Kurmi son of late Jathu Kurmi
6. Bindu Kurmi @ Bindu Prasad son of Shri Lakhan Mahto
7. Umesh Kurmi son of .. (Deleted from the list of respondent vide Order No. 10 dated 21.7.98)

Serial Nos. 5 to 7 are residents of Bhuthaha Kharh, Pas Nagarnausa, District Nalanda

.... Respondent/s

=====

Appearance :

For the Appellant/s : Mr.

For the Respondent/s : Mr.

=====

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 30-01-2018

This appeal under Section 378(1) and (3) of the Code of Criminal Procedure has been filed by the State Government challenging acquittal of the respondents for offence under Sections 148, 302 read with Section 27 of the Arms Act in Sessions Trial No. 19 of 1987 passed by the 5th Additional Sessions Judge, Nalanda at Bihar Sharif. All the seven accused persons-respondents have been acquitted of the charges levelled against them and, therefore, this



appeal by the State Government.

It is the case of the prosecution as narrated in the Fardbeyan of Shyam Sundari Devi, PW 3, that she is the widow of Nathuni Patel and it is her case that her husband Nathuni Patel had purchased 1¼ bighas of land in Balwa Khasam and accused Mohan Kurmi and Umesh Kurmi were also intended to acquire this land. It is alleged that Mohan Kurmi and Umesh Kurmi had requested the informant's husband several times to hand over the land to them and when this was not done, incident of assault took place a few months back. The informant further states that she has two sons Hari and Ashok Prasad. Hari is married with the daughter of one Sheodhari Mahto and Hari was seeking partition of the family property to which the deceased was not agreed. It is said that on 4.3.1986 at about 8 PM while Nathuni Patel, husband of the informant, after taking his meal was sleeping on the roof of his house, he heard some sound from his nearby field and he informed his wife the informant that someone is cutting the maize crops and, therefore, he had gone to look as to what was happening. It is said that Nathuni Patel went off his house, proceeded towards the field and the informant along with her two daughters also followed him. When Nathuni Patel reached the maize field, the informant saw Mukesh Kurmi and Umesh Kurmi and Ganesh Kurmi armed with gun, Arvind, Krishna Kurmi of village



Bhadrudih and Kailash Kurmi also in the said field. On seeing Nathuni Patel it is alleged that Mohan Kurmi and Umesh Kurmi and Ganauri Mahto fired one shot each from their respective guns causing injury to Nathuni Patel due to which he fell down and died.

It is alleged that the accused persons wanted to carry out the dead body of the deceased Nathuni Patel but on hulla raised they ran away. In the morning the informant saw that the crops of the maize field has been cut. All the trees of mango, lemon, guava and banana were also cut down.

It is also alleged that the FIR was lodged on 5.3.1986 at 8.30 AM with regard to the incident which took place on 4.3.1986 at 8 PM. The defence was of false implication due to previous enmity.

The prosecution examined 7 witnesses, namely, Renu Kumari, Sabuja Devi, PW 1 and PW 2, daughters of the informant, Shyam Sundari Devi herself, Md. Wafauddin, PW 4, a formal witness who proved the fardbeyan Ext. 1, PW 5 Surendra Prasad another formal witness who proved the Ext. 2 FIR, PW 6 Ram Bichar Singh the Investigating Officer and PW 7 Dr. Bidhubhushan Singh was the doctor who had examined the deceased. The accused were put to trial and for having been acquitted this appeal by the State.

Learned counsel for the State took us through the fardbeyan Ext. 1 and Ext. 2 the statement of PW 3 Shyam Sundari



Devi, and PW 1 and PW 2 Renu Kumari and Sabuja Devi who were the daughters of the informant to say that the occurrence as indicated has been proved. Therefore, the learned court in acquitting the accused have committed grave error.

On the contrary, learned counsel for the defence took us through the statement of the witnesses, the discrepancies in the statement of witnesses and major discrepancy in the fardbeyan and the statement given by PW 3 in the court. The delay in lodging the FIR and argued that in acquitting the respondents the learned trial court has not committed any error.

We have heard learned counsel for the parties at length and we have gone through the records available. We find that in the FIR lodged immediately on the next day after the occurrence the name of Bindu Kurmi respondent no. 6 was not mentioned. Similarly, another accused Rajendra Kurmi who is now dead was not named in the FIR and even though the six persons are the residents of the same village and known to Shyam Sundari Devi it is surprising that they were never named in the FIR. It is for the first time that they were implicated at the time of making of the statement in the court. That apart, in the fardbeyan PW 3 has named six accused persons, namely, Mohan, Umesh, Ganauri, Arvind, Krishna Kurmi and Kailash Kurmi, out of these six persons Arvind Kurmi and Krishna Kumri are



the brother-in-laws of the informant's son Hari Prasad against whom the informant's son Hari was seeking partition of the family property from her husband. As far as these two accused persons Arvind Kurmi and Krishna Kurmi are concerned, neither in the FIR nor the statement in the court any specific overt act is attributed to them. They are simply shown to be present in the place of incident. It is not known as to why they are implicated without any specific overt act being attributed to them and, therefore, in acquitting them the learned court below has not committed any error. In the statement recorded in the court the appellant has named Mohan Kurmi, Umesh Kurmi, Ganauri Kurmi, Kailash Kurmi, Bindu Kurmi and Rajendra Kurmi now dead as the accused persons who have committed the offence. There is nothing to show as what is the role attributed to them, how they have instigated into the commission of offence and what role has been played by them. That apart, the delay in lodging the FIR and various discrepancies in the statement of PW 3 and PW 1 her daughter are not explained by the prosecution. PW 1 does not say anything about Rajendra Kurmi to be present in the spot. She also does not say as to who instigated who. Similarly, PW 2 and PW 3 do not support the case of the prosecution and the story narrated in the fardbeyan with respect to the specific overt act of the accused persons.

It is after examining all these factors in detail and



analyzing all the evidence the learned trial court acquitted the accused respondents of the charges levelled against them. We have gone through the analysis made by the learned trial court which goes to show that the occurrence has not been proved. That apart, the Investigating Officer in his evidence has clearly indicated that deceased himself was a hardened criminal participating in various unlawful and illegal activities within the area and possibility of false implication cannot be ruled out. There is no chemical analysis of blood-stained cloth, the blood seized from the area is not found to be human blood and taking note of all these lacunae the trial court has found that the case of the prosecution fails and acquittal has been ordered and now we find that the learned trial court has not committed any error in doing so.

Accordingly, finding no merit in the appeal, the same stands dismissed.

(Rajendra Menon, CJ)

(Anil Kumar Upadhyay, J)

mr1/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	01/02/2018
Transmission Date	01/02/2018

