

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.1588 of 2017

Arising Out of PS.Case No. -11 Year- 1997 Thana -
ADHAURA District- BHABHUA (KAIMUR)

=====

Meghnath Yadav, Son of Late Kudu Singh Yadav, resident of
Mauza, Didhar, P.S. Adhaura, District- Kaimur (Bhabua).

.... Appellant/s

Versus

The State of Bihar.

.... Respondent/s

with

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Criminal Appeal (SJ) No. 1039 of 2006

Arising Out of PS. Case No. -11 Year- 1997 Thana -
ADHAURA District- BHABHUA (KAIMUR)

=====

1. Ramjee Dubey, son of Late Bhagwan Dubey
2. Kumar Kharwar @ Raj Kumar Kharwar, son of Late Katwaru Kharwar
3. Kalapu Yadav, son of Late Lakhnan Yadav
All resident of Village-Pipara, P.S.-Adhaura, District-Kaimur
at Bhabua

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

with

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Criminal Appeal (SJ) No. 34 of 2007

Arising Out of PS. Case No. -11 Year- 1997 Thana -
ADHAURA District- BHABHUA (KAIMUR)

=====

Rogi Chaudhari @ Rogi Mallah, son of Late Makhan Chaudhary,
resident of Village-Telari, P.S.-Chenari, District-Rohtas (Sasaram)

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s



with

=====

Criminal Appeal (SJ) No. 46 of 2007

Arising Out of PS. Case No. -11 Year- 1997 Thana -
ADHAURA District- BHABHUA (KAIMUR)

=====

1. Shiv Nath Kharwar son of Juthi Kharbar, resident of Village-
Pipra, P.S.-Adhaura, District-Kaimur
2. Shiv Parshan Koiri, son of Late Mangaru Koiri, resident of
Village-Kurashan, P.S.-Bhabua, District-Kaimur

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

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Appearance :

(In CR. APP (SJ) No.1588 of 2017)

For the Appellant/s : Mr. Vikram Deo Singh, Adv
Mr. Pawan Kumar Singh, Adv
Mr. Tribhuwan Narain, Adv
Mr. Rajni Kant Pandey, Adv
For the State : Smt. Abha Singh, APP

(In CR. APP (SJ) No.1039 of 2006)

For the Appellant/s : Mr. Vikram Deo Singh, Adv
Mr. Pawan Kumar Singh, Adv
Mr. Tribhuwan Narain, Adv
Mr. Rajni Kant Pandey, Adv
For the State : Smt. Abha Singh, APP

(In CR. APP (SJ) No.34 of 2007)

For the Appellant/s : Mr. Vikram Deo Singh, Adv
Mr. Pawan Kumar Singh, Adv
Mr. Tribhuwan Narain, Adv
Mr. Rajni Kant Pandey, Adv
For the State : Smt. Abha Singh, APP

(In CR. APP (SJ) No.46 of 2007)

For the Appellant/s : Mr. Vikram Deo Singh, Adv
Mr. Pawan Kumar Singh, Adv
Mr. Tribhuwan Narain, Adv
Mr. Rajni Kant Pandey, Adv



For the State : Smt. Abha Singh, APP

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL JUDGMENT

Date: 29-03-2018

All the appeals have been heard together and are being disposed of by this common judgment.

2. From the records, it appears that there were two Sessions Trials.

3. In Sessions Trial No. 413 of 1998, the appellants Ramjee Dubey, Kumar Kharwar @ Raj Kumar Kharwar, Kalapu Yadav (Cr. Appeal No. 1039 of 2006), Rogi Chaudhari @ Rogi Mallah (Cr. Appeal No. 34 of 2007), Shiv Nath Kharwar, Shiv Parshan Koiri (Cr. Appeal No. 46 of 2007) have been convicted for the offences under Sections 148, 436, 307/149 of the Indian Penal Code and Section 27 of the Arms Act by judgment dated 13.12.2006 passed by learned Additional Sessions Judge, F.T.C. - III, Kaimur at Bhabua and vide order dated 14.12.2006, they have been sentenced to undergo rigorous imprisonment for two years for the offence under Section 148 I.P.C; rigorous imprisonment for seven years for the offence under Section 436 I.P.C; rigorous imprisonment for seven years for the offence under Section 307/149 I.P.C and rigorous imprisonment for five years for the offence under Section 27 of the Arms Act; the sentences having been directed to run concurrently.

4. In Sessions Trial No. 378 of 2000, the appellant/ Meghnath Yadav has been convicted under Sections 436/149,



307/149 of the Indian Penal Code and Section 27 of the Arms Act by judgment dated 24.03.2017 passed by the learned Fast Track Court, 1st, New, Kaimur and by order dated 27.03.2017, he has been sentenced to undergo rigorous imprisonment for seven years each for the offences under Sections 436 and 307 I.P.C with aid of Section 149 I.P.C and rigorous imprisonment for five years for the offence under Section 27 of the Arms Act and fine of Rs. 5000/- and Rs.4000/- each respectively; in default of payment of fine, to further suffer simple imprisonment for six months.

5. The case of the prosecution is based on the F.I.R lodged by Mukh Lal Singh who has been examined as P.W. 6 in Sessions Trial No. 413/98 (P.W. 7 in Sessions Trial No. 378/2000). In his F.I.R, he has alleged that in the night intervening between 16.04.1997 and 17.04.1997 while he was sleeping in his house with his family members, he heard a sound of firing. He also learnt that his uncle Ram Briksh Singh (P.W. 2) had come out of his house to urinate when he was hit by a gunshot which was resorted to by the members of the extremist gang. On being injured, P.W. 2 started crying. On such cries, the informant (P.W. 6) and others went to the upper portion of the *Dalan* and started firing at the extremists. The extremists had also set fire to the thatched houses. In the light of the flames, P.W. 6 is said to have identified some of the appellants. He also saw that there were about 50-60 extremists who were dressed



in police uniform. They had surrounded the houses of the villagers and were firing. Bombs were also being exploded. The accused persons appeared to be between the age group of 26-55 years. Later, it was learnt by the aforesaid prosecution witness that huge damage has been caused to the cattle and properties worth several lakhs were destroyed. When the informant along with his brother Paras Nath Singh (P.W. 1) started firing at the extremists, they retreated after leaving behind their weapons of assault. The police was informed about the occurrence in the night but the police party arrived only in the next morning when the F.I.R was lodged.

6. On the basis of the aforesaid statement made by P.W. 6, a case vide Adhaura P.S. Case No. 11 of 1997 dated 17.04.1997 was instituted for the offences under Sections 147, 148, 149, 307, 324, 436, 427, 120(B) of the Indian Penal Code, Section 27 of the Arms Act, 3/5 of the Explosive Substances Act and Section 17 of the Criminal Law Amendment Act.

7. The police, after investigation submitted charge-sheet against some of the appellants whereupon cognizance was taken and the case was committed to the Court of Sessions for trial.

8. Learned Trial Court, on examining seven witnesses on behalf of the prosecution and none on behalf of the defence, convicted the appellants as aforesaid.

9. In the trial of appellant Meghnath Yadav(Cr. Appeal



No. 1588/2017), six prosecution witnesses were examined and thereafter he was also convicted and sentenced as aforesaid.

10. Most of the prosecution witnesses were common in both the Sessions Trials.

11. The witnesses who have deposed in both the Sessions Trial are Paras Nath Singh, Ram Briksh, Ashok Kumar Singh, Ram Niyadi Singh and Mukh Lal Singh.

12. Mr. Vikram Deo Singh, learned counsel appearing for the appellants has submitted that the prosecution has not been able to prove the case beyond all reasonable doubt for the reason that the allegation of firing by the miscreants leading to injuries to Ram Briksh Singh has not been established and proved.

13. The Doctor has not been examined at the trial and no explanation has also been offered for his non-examination. Even the injury report of Ram Briksh Singh has not been brought on record.

14. It has further been contended that despite the allegation of the miscreants, who are about 50-60 in numbers, having fired several rounds from their weapons and exploded bombs, the police did not find any empty cartridge or remain of exploded bombs from the place of occurrence. There were about 100-150 rounds of firing from either side but nobody appears to have been injured/hurt.

15. Lastly, it was submitted that the Investigating



Officer has not been examined which has caused prejudice to the case of the appellants. No explanation also has been offered for the non-examination of the Investigating Officer.

16. The place of occurrence also could not be proved.

17. The deposition of the witnesses are extremely discrepant with respect to the houses which were set on fire.

18. Despite there being clear deposition of the witnesses regarding a number of cattle having been burnt and charred to death, none of the remains of the burnt cattle were seized or sent for forensic examination. In fact, not a single house was found to have been damaged. No splinter or explosive materials were found at the place of occurrence.

19. On the aforesaid ground, it has been submitted on behalf of the appellant that the entire case appears to be doubtful and no reliance, therefore, could be placed upon anyone of the witnesses.

20. In order to test the correctness of the prosecution version and the contentions on behalf of the appellants, it would be necessary to refer to the deposition of the informant/Mukh Lal Singh first.

21. He has deposed before the Trial Court that the occurrence took place at about 12:30 A.M. in the night of 16.04.1997. He was sleeping in his house along with his family members, when he heard the sound of firing. He had kept his licensed weapon along with him. When his uncle, Ram Briksh



Singh got up for urinating, somebody fired at him which hit him on his left hand. On his cries, the aforesaid witness got up and came in the front portion of his house. He found that the door of the house was locked from outside. Thereafter, he went on the roof and from there saw the appellants in the light of the flames which were emanating from the houses which were set on fire by the miscreants. He has stated that when he came near the house, he found that his uncle had been fired at, leading to injuries on his person. He has further stated in his deposition that because of the action of the extremists, his whole house was burnt. He has given the details of the damages which had occurred because of the houses being set on fire.

22. On being specifically questioned whether any person was hurt in the firing resorted to by him and his brother, he has stated that the accused persons were standing at a distance of about 60-70 feet and he had identified them only in the light of the flames. With respect to the identification of the appellants, he has, in a general manner, stated that those persons used to visit the village for holding meetings and on one such occasion, he had seen them earlier. When the aforesaid witness was confronted with the question as to what kind of meeting was attended by them, the aforesaid witness only stated that such meetings did not cause any disturbance to him.

23. Mr. Vikram Deo Singh, learned counsel for the appellants has submitted that from his deposition, it can clearly



be made out that he had wrongly identified the appellants. The appellants were standing at a distance of about 60-70 feet and except for the flames over the thatched houses of the village, there was no other source of light for the appellants to be identified. The falsity of the prosecution version further becomes evident that 100-150 rounds of firing was resorted to by P.W. 6 and his brother but not a single person from the side of the accused persons was injured.

24. The reason given by P.W. 6 is that they were at a very big distance of 60-70 feet.

25. In this context, it has also been submitted that if the scale of damage is stated to be so great, it ought to have been shown to the Investigating Officer but curiously nothing of that kind appears to have been found by the police party.

26. Ram Briksh Singh (P.W. 2), who is stated to have been injured in the occurrence has deposed that no sooner had he come out of his house to urinate, he was fired at and one of the shots hit him near his waist. He had also identified some of the appellants. After being hurt, he ran towards the sitting place and then he found that accused Sushil was throwing a bomb at his house. His house also had been set on fire. Some of the female members of his house had received splinter injuries because of the bomb exploded by the accused persons. In his deposition, he has also given details of the damage to the cattle and other personal belongings of the members of his house. He



has identified only appellant Rogi Mallah (Cr. Appeal No. 34/2007) and Meghnath Yadav (Cr. Appeal No 1588/2017). He has not identified the other appellants. Even with respect to the identification of appellant Rogi Mallah (Cr. Appeal No. 34/2007), his deposition was not very specific.

27. Paras Nath Singh (P.W. 1), who is the brother of the informant has also claimed to have helped the informant in forcing the miscreants to retreat. He also started firing from his weapon along with P.W. 6. Before the Trial Court, he has identified appellant Ramjee Dubey (Cr. Appeal No. 1039/2006) but his identification was found to be doubtful. Appellant Kumar Kharwar (Cr. Appeal No. 1039/2006) was identified by him as Kumar Singh. Otherwise, he has identified the other appellants.

28. Similar deposition has been made by the other witnesses who have only stated that the accused persons were 60-70 in numbers.

29. From the conspectus of the deposition of the witnesses, it becomes very apparent that evidence of the witnesses do not prove the prosecution case beyond reasonable doubts. This court says so because, according to the witnesses, not only P.W. 2/ Ram Briksh Singh was injured in the occurrence but other family members of the houses of the witnesses also received splinter injuries. No injury report has been brought on record and the Doctor has not been examined to testify to the correctness of the version of the prosecution witnesses.



30. What catches the attention of this Court is that in the event of the allegation of such a huge scale of damage caused by the accused persons, if nothing was found at the place of occurrence which could suggest firing resorted to by the accused persons or any evidence with respect to the houses being damaged or set on fire, then prosecution story is not correct. Then, even the identification of the appellants become doubtful. Consistently the witnesses have spoken about identifying the appellants in the light of the flames of the burning houses.

31. As such, there is no option for this Court but to set aside the judgment and order of conviction in both the cases.

32. Accordingly, judgment and order of conviction dated 13.12.2006 & 14.12.2006 respectively passed by learned Additional Sessions Judge, F.T.C-III, Kaimur at Bhabua against the appellants Ramjee Dubey, Kumar Kharwar @ Raj Kumar Kharwar, Kalapu Yadav (Cr. Appeal No. 1039 of 2006), Rogi Chaudhari @ Rogi Mallah (Cr. Appeal No. 34 of 2007), Shiv Nath Kharwar, Shiv Parshan Koiri (Cr. Appeal No. 46 of 2007) in connection with Sessions Trial Nos. 413/98/274/2002 as well as the judgment and order of conviction dated 24.03.2017 & 27.03.2017 respectively passed by learned Fast Track Court-I, New, Kaimur at Bhabua in connection with Sessions Trial No. 378 of 2000, arising out of Adhaura P.S. Case No. 11 of 1997 are set aside.



33. The appeals are allowed.

34. The appellants are acquitted of all the charges.

35. All the appellants except appellant/Meghnath Yadav(Cr. Appeal No. 1588 of 2017) are on bail. They are discharged from the liabilities of their bail bonds.

36. The appellant Meghnath Yadav (Cr. Appeal No. 1588 of 2017) is directed to be released from jail forthwith, if not wanted in any other case.

37. A copy of the judgment be transmitted to the Superintendent of the concerned Jail for compliance and needful action.

(Ashutosh Kumar, J)

Shageer/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	03/04/2018
Transmission Date	03/04/2018

