

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.242 of 2003

Arising Out of PS.Case No. -null Year- null Thana -null District- SARAN

1. Shila Nath Singh, Son of Late Shri Ram Singh.
2. Rameshwar Singh, Son of Ramashray Singh.
3. Jodha Singh @ Yodha Singh, Son of Satyadeo Singh.
4. Paras Singh, Son of Satyadeo Singh.
5. Jagdish Singh, Son of Ganga Ram Singh
6. Ram Nath Singh, Son of Ganga Ram Singh
7. Baldeo Singh, Son of Brij Bihari Singh.
8. Suresh Singh, Son of Baldeo Singh.
9. Shivji Singh, Son of Phekan Singh.

All residents of Bisen Tola, P.S. Chapra (M), District – Saran at Chapra.

.... Appellant/s

Versus

State of Bihar

.... Respondent/s

with

Criminal Appeal (SJ) No. 282 of 2003

Arising Out of PS.Case No. -null Year- null Thana -null District- SARAN

1. Hira Lal Singh, Son of Late Shri Ram Singh
2. Badri Singh, Son of Late Shankar Singh
3. Bas Layak Singh @ Banslaiyak Singh, Son of Gita Lal Singh
4. Shiv Balak Singh @ Sheo Balak Singh, Son of Ram Deo Singh

All residents of Bisen Tola, P.S. Chapra (M), District – Saran at Chapra.

.... Appellant/s

Versus

State of Bihar

.... Respondent/s

Appearance :

(In CR. APP (SJ) No.242 of 2003)

For the Appellant/s : Mr. Om Prakash Pandey, Adv.
Mr. Jashwant Singh

For the Respondent/s : Mr. Bipin Kumar, App
Mr. Kapil Deo Singh-1
Mr. Vijay Kumar

(In CR. APP (SJ) No.282 of 2003)

For the Appellant/s : Mr. Baxi S.R.P. Sinha, Sr. Adv.
Mr. Arvind Kumar Tripathi, Adv.

For the Respondent/s : Mr. Bipin Kumar, App
Mr. Kapil Deo Singh-1
Mr. Vijay Kumar



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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA
C.A.V JUDGMENT
Date: 13-07-2018

Earlier a report was called for from the S.P. Saran with regard to death/alive status of all the appellants, from which, it appears that appellant nos. 2, 3, 5 and 7 namely, Rameshwar Singh, Jodha Singh, Jagdish Singh and Baldeo Singh of Cr.Appeal (SJ) No. 242 of 2003 has already died. As such the appeal with regard to appellant nos. 2, 3, 5 and 7 stands abated.

2. Appellants in both the above mentioned appeals, stood convicted under Section 396 of the Indian Penal Code (hereinafter referred to as the “IPC”) and were sentenced to undergo rigorous imprisonment of ten years with a fine of Rs. 5,000/- each having default clause by the judgment of conviction and order of sentence dated 28.04.2003 passed by Shri Shyam Nandan Prasad Verma, Adhoc District & Sessions Judge, Fast Track Court No. 1, Saran, Chapra in Sessions Trial No. 107/1988.

3. Prosecution case as per fardbeyan of Tekari Rai PW 3 in short is that on 15.03.87 at about 9 to 10 P.M., while he was sitting at his *darwaza* all of a sudden accused – appellants variously armed entered into his house and appellant Jai Prakash Singh exhorted other accused – appellants to assault and he himself assaulted the informant by means of *farsa* on his right side of waist. After receiving injury, he fled towards the village by raising *hulla*, accused – appellants entered



inside his house and assaulted his mother Tetri Devi, his sister-in-laws (bhabhi), namely, Shiv Pati Devi and Ram Sakhi Devi, by deadly weapons and they took away boxes, clothes and ornaments from them and on alarm raised people started assembling near the place of occurrence, then the appellants fired from their pistols and guns, fled away from the place of occurrence. Thereafter, the injured were brought to the hospital for treatment. Motive behind the occurrence is said to be a petty issue of three years back that accused – appellant Suresh Singh and Shila Sing used to steal potato from the field of informant and when they were caught red handed, they were taken to the Chapra Muffasil police station along with Chaukidar Nathuni Manjhi and they were sent to jail and after the said occurrence, appellants used to threaten them. It is also the prosecution case that the mother of the informant died in hospital during course of her treatment.

4. On the basis of aforesaid fardbeyan, a case under Sections 147, 148, 149, 324, 302, 452 and 380 of the IPC and under Section 27 of the Arms Act has been registered against the accused appellants. Police after investigation submitted charge-sheet. Cognizance of the offence was taken and the case was committed to the court of sessions, which ultimately came to the file of Shri Shyam Nandan Prasad Verma, Adhoc District & Sessions Judge, Fast Track Court No. 1, Saran, Chapra in Sessions, for trial and disposal.



5. Charges were framed under Sections 149/302 of the IPC against accused – appellants Jai Prakash Singh, Badri Singh, Hira Lal Singh and Shiv Balak Singh, against appellants Shiv Balak Singh, Suresh Singh and Bans Layak Singh, charges were framed under Section 324 of the IPC and against appellants Vijay Singh and Jai Prakash Singh charges were framed under Section 323 of the IPC as well as charges against all other accused persons under Sections 452/148 of the IPC. However, later on charge under Section 396 of the IPC was framed against all the accused – appellants and in order to prove the charges, prosecution has examined altogether ten witnesses, out of which, P.W. 1 – Doctor Suresh Prasad, the doctor, who has examined and proved the postmortem report of the mother of informant Tetri Devi, P.W. 2 – Ram Sakhi, an imposter, declared hostile, P.W. 3 – Tekari Rai, informant, declared hostile, P.W. 4 – Dina Manjhi, declared hostile, P.W. 5 – Daya Rai, eye-witness on the point of occurrence, P.W. 6 – Satyendra Rai, another eye witness, P.W. 7 – Baikunth Prasad, a formal witness, P.W. 8 – Ram Sakhi Devi, a witness on the point of occurrence, P.W. 9- Doctor Sidheswari Prasad, who held the post – mortem examination on the dead body of Tetri Devi as also the injuries on the persons of Ram Sakhi Devi and Shiv Pati Devi, P.W.10- Kawaldhari Ram, who proved that his wife Ram Sakhi Devi died on 13.08.2000.

6. Defence had examined one witness, who proved



Municipal Tax receipts as Ext. B to B/3 and Jan Vitran Pranali receipt as Ext. C. Besides that they had also filed injury reports of Chhathi Lal Singh, Rabindra Kumar Singh, Dewa Nand Singh and Jai Prakash Singh as Ext A to A/3.

7. Learned Trial Court after conclusion of trial convicted the appellants under Section 396 of the IPC and sentenced them in the manner aforesaid.

8. Learned counsel for the appellants in both the above mentioned appeals, assailed the impugned judgment on the ground that the trial court has failed to appreciate the fact that in this case material witnesses have been declared hostile except PW 5, PW6 and PW 8, however, admittedly PW5 and PW6 are not the eye witness of the occurrence and thus the whole case is based upon the evidence of sole eye witness PW8 Ram Sakhi Devi and even another injured of this case Shiv Pati Devi has not been examined. It has further been submitted that the source of identification of the appellants is said to be the light of lantern, however, the said lantern has not been brought on record and the occurrence is of night at about 9 to P.M., in such a situation, identification of altogether sixteen persons, itself raises doubt even if it is believed to be true that they were seen in the light of lantern and in this case Investigating Officer has also not been examined and as such, the prosecution case suffers from serious infirmities. It has further been submitted that the contradiction in



evidence of PW 5 and PW 8 has been taken from their earlier statements and as the Investigating Officer has not been examined in this case, as such the aforesaid evidence remained unrebutted and, hence, their evidence on the point of identification of the appellants appears to be doubtful and not free from reasonable doubts and the trial court without appreciating all these infirmities has convicted the appellants under Section 396 of the IPC, which is not sustainable in the eye of law.

9. On the other hand, learned counsel appearing on behalf of the respondent – State has supported the finding of guilt recorded by the Trial Court and submitted that there are sufficient reliable and cogent materials available on the record to prove the guilt of these appellants and PW8 Ram Sakhi Devi herself is an injured in this case and she has supported the case of prosecution and the veracity of her evidence cannot be doubted. Further PW5 and PW6 reached at the place of occurrence just after the occurrence and having seen the appellants fleeing away from there. Further submission of learned counsel for the State is that the evidence of PW8 disclosed that Tetri Devi had named the accused persons, which appears to be dying declaration. It has also been submitted that the doctor, who examined the injured in this case has found the injuries on their person and has also conducted post mortem on the dead body of mother of informant Tetri Devi and, therefore, there is no infirmity in the impugned



judgment of trial court and conviction of appellants under Section 396 of the IPC is just and proper.

10. In the background of the evidence, it appears that PW5, PW6 and PW8 claim themselves to be eye-witness of the occurrence and PW5 has stated that when he reached near the injured, Tetri Devi in unconscious condition disclosed the names of Shiv Balak Singh, Badri Singh, Chhathi Lal Singh and Hiralal Singh, who assaulted her and injured Shiv Pati Devi disclosed the names of Suresh Singh and Bans Layak Singh as the person who assaulted her and Ram Sakhi Devi PW 8 told him the name of Vijay Singh as the person, who assaulted her by the butt of pistol and he had seen the appellant Bans Layak Sing and Shiv Balak Singh taking away the boxes. He also claimed to have identified the accused persons in the light of the lantern and in the light of the moon. This witness has also stated that the accused persons took away the lantern. However, in his cross-examination, in para -16 he has stated that he has disclosed the names of persons, who had taken away the boxes as Shiv Balak Singh and Bans Layak Singh. He has further stated in para -8 of his cross examination, that he has stated before the police that he had identified the accused persons in the light of the lantern and in the moon light and accused persons fled away along with the lantern and in para -22 of his cross-examination, he has stated that he has disclosed before the police that Tetri Devi disclosed the names of Shiv Balak Singh, Badri



Singh, Chhathi Lal Singh and Hiralal Singh. In para -25 also, he has stated it is not true that he has made brick batting on the accused persons due to which, Jai Prakash and other accused persons received injuries and Chhathi Lal Singh has lodged a case against him and others. Thus, considering the above facts, it appears that though the witness claimed to have identified the accused persons in the light of lantern and also disclosed that Tetri Devi have disclosed the name of accused persons but his contradiction has been taken from his previous statement and as the Investigating Officer has not been examined in this case, he could not be confronted with the above evidence and that raises a doubt about evidence of PW5.

11. PW6 also claimed himself to be the eye-witness of the occurrence and named the accused persons also and stated that they have assaulted Tetri Devi, mother of informant, Shiv Pati Devi and Ram Sakhi Devi and has also stated that the accused persons had taken away the lantern with themselves but his evidence disclosed that after appellants fled away, Daya Rai PW5 and Tekari Rai PW3 (informant) had entered inside the house and if this piece of evidence of PW6 is to be believed then it appears that PW5 and PW6 are not the eye witness of the occurrence. Attention of this witness was drawn towards the statement made before the police in para -14 that accused Jai Prakash Singh came and told others to kill him and looted away the property and Tetri Devi has disclosed to him that Jai Prakash



Singh, Chhathi Lal Singh, Hiralal Singh and Badri Singh assaulted her by means of lathi, farsa and Shiv Pati has told that Shiv Balak Singh and Suresh Singh assaulted her by *farsa* and *lathi* and he has also stated before the police that the accused persons had taken away the lantern and it was a dark night.

12. Considering the above evidence in the background of that the Investigating Officer has not been examined, clearly creates a reasonable doubt with regard to the above evidence.

13. PW8 Ram Sakhi Devi is the injured in this case and she has also supported the case of prosecution and stated that in the light of lantern, she had identified the accused persons and further stated that she was assaulted by Vijay Singh assaulted her by butt portion of the pistol and Shiv Pati Devi was assaulted by Shiv Balak Singh, Bans Layak Singh and Suresh Singh and Tetri Devi was assaulted by Jai Prakash Singh, Chhathi Lal Singh, Hiralal Singh and Badri and further disclosed that Shiv Balak Singh and Bans Layak Singh had taken away the boxes from her house. It further appears from evidence of PW8 in para -13 of her evidence that there was enmity between the parties from before. Her evidence also disclosed in para - 14 that at the time of occurrence, it was dark night. Her attention has also been drawn towards her statement made before the police and she has stated that she disclosed before the police that lantern was lighting in the Aangan and she has also stated before the police that accused



Shiv Balak Singh and Bans Layak Singh took away two boxes and also stated before the police that Tetri Devi had disclosed the name before her to Tekari Rai PW3, Daya Rai PW5 and Satyendra Rai PW6. In absence of examination of I.O., he could not be confronted with the above evidence, that certainly creates doubt about their credibility.

14. PW9 is the doctor, who conducted post mortem examination on the dead body of Tetri Devi and also examined the other two injured viz. Shiv Pati Devi and Ram Sakhi Devi and in this case, there is consistent evidence that Shiv Pati Devi and Ram Sakhi Devi sustained injuries and Tetri Devi also sustained injuries and died. However, the evidence of the witnesses suffers from contradictions from their earlier statements and in that view of the matter, examination of the Investigating Officer was vital and non examination of Investigating Officer has caused serious prejudice to the defence and benefit of which, has to be given to the defence. Further, it appears that evidence of PW8 that it was dark night and in such a situation, the claim of the witnesses that they identified the appellants in the light of the lantern, appears to be doubtful and the said lantern has not been brought on record. Furthermore, identifying such a large number of persons in the light of lantern, creates a serious doubt about the claim of the witnesses of being eye-witness of the occurrence specially when the prosecution evidence itself shows that



there was enmity between the parties from before. However, learned Trial Court has failed to appreciate the aforesaid inconsistencies in the prosecution case, while convicting the appellants under Section 396 of the IPC. As such, the appellants are entitled for benefit of doubt.

15. Accordingly, these appeals are allowed. Judgment of conviction and order of sentence dated 28.04.2003 passed by Shri Shyam Nandan Prasad Verma, Adhoc District & Sessions Judge, Fast Track Court No. 1, Saran, Chapra in Sessions Trial No. 107/1988, is hereby set aside.

16. As the appellants are on bail, they are discharged from liabilities of their bail bonds.

(Vinod Kumar Sinha, J)

sunil/-

AFR/NAFR	AFR
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