

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.212 of 2003

1. Ramautar Singh, son of late Dukhai Singh, resident of village Aurahi, Police Station Babu Barhi, District-Madhubani
2. Ram Parichhan Singh, son of late Dukhai Singh, resident of village Aurahi, Police Station Babubarhi, District- Madhubani
3. Jitendra Kumar Singh, son of Sri Asharfi Singh, Resident of village Selra- Saskaria, Police Station Jainagar, District-Madhubani
4. Baidya Nath Singh, son of late Harilal Singh, Resident of village Kasma Marar, Police Station Khajauli, District- Madhubani
5. Ramprit Singh, son of late Nebi Singh, Resident of village Kasma Marar, Police Station Khajauli, District-Madhubani
6. Ramhirday Singh, son of Negar Singh alias Jamun Singh, Resident of village Kasma Marar, Police Station Khajauli, District-Madhubani
7. Surya Singh alias Suraj Singh, son of Sri Jugeshwar Singh, Resident of village Kasma Marar, Police Station- Khajauli, District-Madhubani
8. Sashi Nath Singh alias Shiv Nath Singh, son of late Ramkhelawan Singh, Resident of village Selar Laskariya, Police Station-Jainagar, District- Madhubani
9. Panchlal Singh, son of late Sukhdeo Singh, resident of village Kasma Marar, Police Station Khajauli, District- Madhubani
10. Dinesh Singh, son of Sri Matuk Singh alias Jagdish Singh, Resident of village Kashma Marar, Police Station Khajauli, District-Madhubani
11. Ram Narain Singh, son of late Raghunandan Singh, resident of village Salrea Laskaria, Police Station Jainagar, District Madhubani

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Ajay Kumar Thakur, Advocates Mr. Ritwaj Raman, Advocate
For the Respondent/s	:	Mr. Bipin Kumar, APP

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL JUDGMENT

Date : 20-01-2018

This appeal has been preferred by 11 appellants against the judgment of conviction and order of sentence passed by the Fast Track Court No. 1, Madhubani in Sessions Trial No. 60 of 1992/06 of 2001 on 27th February, 2003 whereby all the appellants have been found guilty under Sections 147, 323 IPC and appellants



Ram Autar Singh, ram Parichhan Singh, Baidnath Singh have been further convicted 148 and 324 of the Indian Penal Code and all the appellants were released on probation of good conduct on entering into bond without sureties under the provisions of Section 360 (1) Cr. P.C. for the period of one year.

2. The prosecution case in brief is that one Kusum Devi, P.W.7 lodged her fardbeyan before the Sub-Inspector of Babu Barhi Police Station alleging therein, inter alia, that on 1.6.1990 at night she was sitting in her house at the time of breakfast in the morning where her husband, P.W. 6, Jaleshwar Singh was present in the house and at that very time all of a sudden co-villagers namely, Suraj Singh, Sukhdeo Singh, Ram Autar Singh, Parichhan singh, Dukhai Singh and four persons of village Laskari and some unknown persons whose names are not known to her armed with weapons assembled and started constructing hut house in the open field situated towards east of her house, on which her husband told that matter be finalized in panchayati. Tthereafter, on the order of accused Dukhai Singh to kill, accused Ram Autar Singh, Parichhan Singh and others assaulted her husband by means of lathi, danta and as such he sustained injury. Thereafter her husband fled away due to fear and after entering the house of Krishnadeo Singh closed the door from inside but the accused



persons also chased him and closed the door from outside. Thereafter, they got hut standing over open land. It is further said that accused persons also assaulted her by means of lathi, danta and accused Suraj Singh and others resident of village Laskariya made shot fire from their pistol. Further accused Ram Autar Singh committed theft of cash of Rs. 5,000/- kept in a box from her house. Thereafter, she also gave the motive behind the occurrence that there is a dispute with the accused and case was going on.

3. On the basis of the aforesaid fardbeyan Babu Barihi P.S. Case No. 52 of 1990 was registered and the police after investigation submitted charge sheet against 13 accused persons. The case was committed to the Court of Sessions. The accused persons on framing of charge pleaded not guilty and as such put on trial. However, during the trial accused Sukhdeo singh died and as such the case abated against him whereas the trial of the appellant Ram Biulas singh was separated.

4. On behalf of the prosecution 9 witnesses were examined and out of 9 witnesses, P.Ws. 1,2,4 and 5 have been declared hostile, P.W. 3 is son-in-law of the informant, P.W. 6 is the victim and husband of the informant, P.W. 7 is the informant Kusum Devi, P.W.8 is the doctor who examined the injured, P.W. 9 is the



formal witness. The trial court on scrutiny of the evidence convicted the appellants for the offence as discussed hereinabove.

5. Learned counsel for the appellant submitted that in the present case the IO was not examined and as such, the prosecution has suffered immense prejudice on account of non-examination of the IO of the case. He next submitted that in the present case the conduct of the prosecution witnesses are most unnatural and they are at variance also. He next submitted that in the present case there is inordinate delay in lodging of the fardbeyan and there is unexplained delay in sending the FIR to the court of the Chief Judicial Magistrate. The fardbeyan was recorded at 1.15 AM on 1.6.1990 whereas the occurrence took place in the morning of 31.5.1990. The formal FIR was sent to the Chief Judicial Magistrate which was seen on 2.6.1990. In the totality of the fact situation, there is unexplained delay in lodging the fardbeyan and sending the FIR which renders the prosecution case under serious doubt and there is every probability of false implication in the present case.

6. Learned counsel submitted that in the present case there is vital contradiction in the deposition of the witnesses and the opinion of the Doctor. He next submitted that in the present case no independent witness was examined to support the prosecution



case and highly interested and partisan witnesses were examined on behalf of the prosecution. Referring to the deposition of P.W. 3 he submitted that this witnesses has stated that on account of fixing of Khambha the incident took place.

7. Mr. Bipin Kumar, APP appearing on behalf of the State submitted that in the present case the appellants have not suffered any prejudice as the appellants have been granted the benefit of the provision of Section 360(1) of the Code of Criminal Procedure and now after 15 years the direction to keep peace for a period of one year for good behavior has become infructuous.

8. Learned counsel for the appellants in reply submits that notwithstanding the fact that the trial court has granted the benefit of the provisions of Section 360 (1) Cr.P.C. The judgment of conviction is stigma against the appellants and as such, this Court should examine the entirety of the fact situation and decide whether the trial court was justified in convicting the appellants.

9. I have given my anxious consideration to the submissions of the parties and materials available on record and from the materials available on record, it is seen that the appellants were convicted in the present case under various sections of the Indian Penal Code. In this case there was previous land dispute and enmity. The enmity cuts both ways. There may be chance of false



implication or may be a reason for committing the crime. In view of the previous enmity on account of land dispute the delay in lodging FIR appears to be well designed and well calculated. The delay in sending the FIR to the Court of the CJM is also crucial. The Apex Court in the judgment in the case of **State of Punjab Vs. Tarlok Singh:** (1972) 3 SCC 869, in para 5 has held out as follows:

5. First, the High Court noticed the suspicion created by the circumstance that the copy of the First Information Report purported to have been lodged at 3.45 p.m. did not reach the Magistrate at Dasuya till 8 a.m. the next day, even though it was sent through a special messenger. The distance between the scene of occurrence & Dasuya was only 15 or 16 miles. The inference sought to be drawn is that, in fact, the report was not lodged at 3.45 p.m., but at a much later hour, after the police had arrived at the scene of occurrence and there were consultations to decide what version should be put forward and who should be implicated for the murder. The prosecution, in fact, made no attempt to explain this delay. Such delay, thus, casts doubt on the prosecution version that the Report was lodged at 3.45 p.m. without lapse of unnecessary time.

10. In the case of **Ishwar Singh Vs. The State of Uttar Pradesh:** AIR 1976 SC 2423, in paras 5 and 9 the supreme court has held as follows:



“5. Mr. Frank Anthony appearing for appellant Ishwar Singh submitted that in affirming the Judgment of the trial Court, the High Court also overlooked certain important aspects of the case that the Sessions Judge had failed to consider. He pointed out that the F.I.R. which is stated to have been lodged at 9.05 A. M. on February 14, 1973 was sent out from the police station the next day, February 15; the time when it was despatched is not stated, but it appears from the record that the Magistrate received it on the morning of February 16. The Court of the Magistrate was nearby, which makes it difficult to understand why the report was sent to him about two days after its stated hour of receipt at the police station. [Section 157](#) of the CrPC, 1898 as well as of 1973 both require the first information report to be sent "forthwith" to the Magistrate competent to take cognizance of the offence. No explanation is offered for this extraordinary delay in sending the report to the Magistrate. This is a circumstance which provides a legitimate basis for suspecting, as Mr. Anthony suggested, that the first information report was recorded much later than the stated date and hour affording sufficient time to the prosecution to introduce improvements and embellishments and set up a distorted version of the occurrence. In this case the suspicion hardens into a definite possibility when one finds that the case made in Court differs at least in two very important particulars from that narrated in the F.I.R. Mahabir Singh, who lodged the first information report, stated in-Court that he had invited some people to his house to effect a settlement between him and Ishwar Singh, and that he had also sent Ghanshyam to call Ishwar Singh there.



The F.I.R. does not mention anything like this. From the F.I.R. it appears as if the accused persons came uninvited to his house, demanded why he had demolished the drain, and started assaulting him and the other persons who were present there. It is also difficult to understand why Mahabir should invite anyone to his house for a settlement, if really Ishwar Singh had permitted him to demolish the drain as he claimed. Further, the F.I.R. does not mention that Mahabir and Satyapal wielded lathis in their defence when attacked and that this resulted in some of the accused getting injured; but that is what both Mahabir (P.W. 1) and Satyapai (P.W. 2) stated in their evidence in Court. These variations relate to vital parts of the prosecution case, and cannot be dismissed as minor discrepancies. In such a case, the evidence of the eye-witnesses "cannot be accepted at its face value", as observed by this Court in *Mitter Sain v. State of U.P.*

9. We have pointed out that the trial Court in convicting the appellants overlooked certain significant features of the case, namely, the inordinate and unexplained delay in despatching the first information report to the Magistrate; the difference in the account given by the prosecution witnesses and as appearing from the first information report of the occurrence; the absence of any statement in the first information report as to the injuries received by some of accused, and the non-examination of material witnesses. The High Court in affirming the Judgment of the trial Court also failed to advert to these circumstances. We do not therefore think that the case against the appellants has been proved beyond reasonable doubt. The appeals are accordingly allowed and the Order of conviction and the



sentences passed on the appellants are set aside We direct that the appellants be set at liberty forthwith.”

11. Thus both the judgments are the settler on the point of delay in sending the FIR creates serious doubts about the improvement of the prosecution case.

11. Considering the present case in the light of the aforesaid judgments of the Apex Court , I am of the considered view that in the backdrop of the land dispute and previous enmity, the unexplained delay in lodging the fardbeyan and delay in sending the FIR to the court of CJM creates serious doubt about the false implication in this case. In addition thereto, I find that there is no scientific test to conclusively held out that the appellants were guilty under Sections 3 and 4 of the Explosive Substances Act as there is no injury of such kind and the nature of injury does not conclusively indicate that it was caused by fire arm or explosive substance in the absence of scientific report. In the present case the IO was not examined and as such, counsel for the appellants appears to be justified in making the submission that the defence has suffered immense prejudice on account of non-examination of the IO and examination of only highly interested witnesses. The independent witnesses have been declared hostile and as such the court is of the view that in the totality of the fact situation which



indicate many lapses in the investigation and conduct of the trial in the present case manifests that the trial court has committed error in complying with the mandatory requirement of examination of the accused under Section 313 Cr.P.C. as the appellants were not confronted with all the adverse circumstances which surfaced during the trial, thus the cumulative effect of lapse in the investigation and the trial leads to conclusion that the conviction of the appellants is not beyond all reasonable doubt.

12. In view of the above, the appeal is allowed. The judgment of conviction of the trial court is set aside. The appellants are accordingly declared free men and not liable to any criminal liability in this case.

(Anil Kumar Upadhyay, J)

spandey/-

AFR/NAFR	NAFR
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