

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.506 of 1994

1. JAGDISH SINGH @ JHURI SINGH
2. Ghurahu Singh, Both are sons of Late Ram Lochan Singh
3. Vijay Bahadur Singh, son of Loknath Singh, All resident of village-
Nandna, Post-Hata, P.S. Chainpur, District-Kaimur (Bhabua).
... .. Appellants

Versus

The STATE OF BIHAR
... .. Respondent

Appearance :

For the Appellants : Mr. Vikram Deo Singh, Advocate
For the Respondent : Mr. Shiwesh Chandra Mishra, APP

**CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR
SRIVASTAVA**

and

HONOURABLE MR. JUSTICE PRABHAT KUMAR SINGH

ORAL JUDGMENT

**(Per: HONOURABLE MR. JUSTICE HEMANT KUMAR
SRIVASTAVA)**

29-07-2019 Heard learned counsel for the appellants as well as
learned Additional Public Prosecutor for the State and perused
the record along with the Lower Court Records.

2. This criminal appeal has been preferred against
judgment of conviction and sentence order dated 01.10.1994
passed by learned 3rd Additional Sessions Judge, Kaimur at
Bhabua in Sessions Trial No.217/126 of 1993 by which and
whereunder learned 3rd Additional Sessions Judge, Kaimur at
Bhabua (hereinafter referred to as 'the trial Court') convicted
the appellants for the offence punishable under Section 302 read
with Section 34 of the Indian Penal Code and, accordingly,
sentenced them to undergo rigorous imprisonment for life and,
furthermore, the learned trial Court convicted the appellant no.1



Jagidsh Singh @ Jhuri Singh and appellant no.2 Vijay Bahadur Singh for the offence punishable under Section 302/34 of the Indian Penal Code but no separate sentence was awarded to them thereunder.

3. Briefly stated, prosecution case is that PW-9 (Jagar Nath Pandey) gave his fardbeyan to PW-11 (Bachcha Singh) on 25.10.1991 at about 2 A.M. at village-Nandana to the effect that on 24.10.1991 at about 8.30 P.M. his son, namely, Sidheshwar Nath Pandey @ Naga Pandey had gone to his Chamber (Boring) for irrigating the field. He further claimed that one Jodhan Koiry was caretaker of above stated chamber. He further, claimed that the above stated Jodhan Koiry came running at about 10 P.M. and informed that Sidheshwar Nath Pandey @ Naga Pandey was caught by 4 to 5 unknown persons whereas he was compelled to leave the place. PW-9 (Jagar Nath Pandey) further claimed that he heard the sound of firing and thereafter, he along with others went at his chamber raising alarm and saw that his son Sidheshwar Nath Pandey @ Naga Pande was lying dead and someone had committed his murder by sharp cutting weapon or by shooting him. PW-9, further claimed that his son was killed due to previous enmity. He, also stated that the culprits had already left the place of occurrence



before his arrival. He, further, claimed that he would disclose the name of assailants later on. He also claimed that his mental condition was not fit at the time of recording his fardbeyan.

4. On the basis of aforesaid fardbeyan of PW-9 (Jagar Nath Pandey), Chainpur P.S. Case No.103 of 1991 under Section 302 of the Indian Penal Code and Section 27 of the Arms Act was registered and formal FIR was drawn up against unknown.

5. PW-11 (Bachcha Singh) took the charge of investigation. He recorded the statements of witnesses, inspected the place of occurrence and did all the other formalities but, he submitted chargesheet only against appellant no.2 Ghurahu Singh whereas kept the investigation pending against the remaining appellants. However, before completion of investigation, he handed over the charge of investigation to PW-10 Ram Manohar Tiwary who, subsequently, submitted chargesheet against the remaining appellants. The cognizance of the offence was taken and the case was committed to the Court of Sessions, in usual way.

6. The appellants stood charged for the offence punishable under Sections 302/34 of the Indian Penal Code whereas appellant no.1, namely, Jagdish Singh @ Jhuri Singh



and appellant no.3, namely, Vijay Bahadur Singh stood, separately, charged for the offence punishable under Section 27 of the Arms Act. The appellants denied the offence and claimed to be tried.

7. In course of trial, prosecution examined, altogether, 12 witnesses and also got exhibited inquest report, postmortem report etc. The statements of appellants were recorded under Section 313 of the Cr.P.C. in which they reiterated their innocence and claimed their false implication.

8. One defence witness was examined and some documents were got exhibited by the appellants. The statements recorded under Section 313 of the Cr.P.C. as well as trends of cross-examination of prosecution witnesses reflect that the defence of appellants was total denial of the prosecution story.

9. The learned trial Court after evaluating the prosecution evidence passed the judgment of conviction and sentence order having relied upon PW-1 (Sudharma Nand Pandey), PW-2 (Sheo Murat Pandey), PW-3 (Gupta Nath Pandey) and PW-8 (Deo Murat Pandey) as well as other martial prosecution witnesses.

10. The learned counsel appearing for the appellants assailed the impugned judgment of conviction and



sentence order arguing that the trial Court failed to properly appreciate the prosecution evidence. He, submitted, that admittedly, the fardbeyan of PW-9 (Jagar Nath Pandey) was recorded on 25.10.1991 at 2 A.M. at village-Nandna but PW-9 (Jagar Nath Pandey) did not disclose the name of assailant. It is also an admitted position that occurrence took place on 24.10.1991 at about 10 P.M., but till the recording of fardbeyan of PW-9 (Jagar Nath Pandey), the names of assailants of the deceased had not surfaced. He, further, submitted that according to fardbeyan of PW-9 (Jagar Nath Pandey), one Jodhan Koiry gave information of the alleged occurrence to PW-9 (Jagar Nath Pandey) immediately after the alleged occurrence and admittedly, the aforesaid Jodhan Koiry did not disclose the name of assailants. Learned counsel, further, submitted that the aforesaid Jodhan Koiry was co-villager of PW-9 as well as appellants and had the appellants been participated in the alleged occurrence, the said Jodhan Koiry would have certainly disclosed the name of appellants as assailants. He, submitted, that moreover, the aforesaid Jodhan Koiry was not examined by the prosecution.

11. He, next, submitted that PW-6 (Ashok Kumar Pandey) and PW-8 (Deo Murat Pandey) claimed to have seen



the appellants just after the alleged occurrence entering their houses having fire arm in their hands but both the aforesaid witnesses improved their respective statements in course of trial as both the aforesaid witnesses had not made such statements before PW-11 (Bachcha Singh) and, therefore, no reliance can safely be placed upon the statements of PW-6 (Ashok Kumar Pandey) and PW-8 (Deo Murat Pandey).

12. He, next, submitted that PW-1(Sudharama Nand Pandey) and PW-3(Gupta Nath Pandey) claimed that they were present at the place of occurrence, when occurrence took place and all the above prosecution witnesses stated that the appellants tied their hands and, thereafter, entered into the chamber of deceased and, after that, they heard sound of firing. He, further, submitted that the aforesaid witnesses also claimed that they saw the appellants coming out from the chamber having fire arms in their hands and there was blood on their person.

13. Learned counsel for the appellants challenged the claim of PW-1 (Sudharma Nand Pandey), and PW-3 (Gupta Nath Pandey) arguing that PWs.1 and 3 are co-villagers of PW-9 (Jagar Nath Pandey) as well as appellants. Admittedly, PW-11 (Bachcha Singh) reached at the place of occurrence on



25.10.1991 at 2 A.M. and remained there till morning but it is surprising enough that the statements of PWs.1 and 3 were recorded on 26.10.1991. He, submitted that the aforesaid witnesses tried to explain the above stated delay stating that out of fear they confined themselves in their respective houses and could not dare to come out from their houses. Learned counsel further submitted that if PWs.1 and 3 had seen the appellants committing the alleged occurrence, they would have certainly disclosed the aforesaid facts to informant (PW-9 Jagar Nath Pandey) as well as their co-villagers but the aforesaid prosecution witnesses kept mum till 26.10.1991 and for the first time, they disclosed the name of appellants as assailants on 26.10.1991 and, therefore, the aforesaid delay in recording the statements of PWs.1 and 3 under Section 161 of the Cr.P.C. creates doubt about the claim of PWs.1 and 3 and, therefore, in the aforesaid circumstance, the impugned judgment of conviction and sentence order cannot sustain in the eye of law.

14. Learned counsel of the appellants, next, submitted that PW-2 Shiv Murat Pandey claims that he had seen the appellants while they were returning from the place of occurrence after committing the alleged occurrence but, admittedly, his statement under Section 161 of the Cr.P.C. was



recorded on 26.10.1991 and prior to that he did not disclose the above fact before any person including his family members and, therefore, this witness is not trustworthy.

15. On the other hand, learned Additional Public Prosecutor supported the impugned judgment of conviction and sentence order arguing that PWs.1 and 3 are eye witnesses and they claimed before the trial Court that they had seen the appellants having fire arms in their hands, entering into the chamber of deceased and after that they came out from the chamber of the deceased and at that time their clothes and hands were soaked with blood. Learned APP further submitted that PW-6 (Ashok Kumar Gupta) and PW-8 (Deo Murat Pandey) claimed that while they were going towards place of occurrence, they saw the appellants entering into their respective houses with fire arm in their hands in suspicious condition and, therefore, all the aforesaid circumstances clearly indicate that it were the appellants who committed the murder of deceased, and, therefore, the learned trial Court rightly convicted the appellants.

16. Having heard the rival contentions of both the parties, we went through the lower court records. It is an admitted position that the deceased was killed inside the



chamber and PWs-1, 2 and 3 claimed before the trial Court that they had seen the appellants entering into the chamber of the deceased having fire arm in their hands and, after that, they heard sound of firing and saw the appellants coming from the chamber of deceased having their clothes and hands soaked with bloods.

17. Furthermore, it is admitted position that PW-6 (Ashok Kumar Pandey) and PW-8 (Deo Murat Pandey) claimed that they had seen the appellants entering into their respective houses having fire arm just after the alleged occurrence and on the basis of aforesaid two circumstances, the learned trial Court passed the judgment of conviction.

18. Let us examine the claim of aforesaid prosecution witnesses. PW-1 (Sudharama Nand Pandey) claims that on the alleged date of occurrence, he had gone to irrigate his field and had talked with deceased to provide him water for irrigation. PW-1 Sudharma Nand Pandey, further, claimed that PW-3 Gupta Nath Pandey was also present there. He, further, claimed that in the meantime, seven persons came there and encircled them. He, further, claimed that out of the aforesaid nine persons, he identified appellants Jagdish Singh @ Jhuri Singh, Ghurahu Singh and Vijay Bahadur Singh. He, further,



claimed that appellant Jagdish Singh @ Jhuri Singh was armed with gun and the appellant Ghurahu Singh was armed with *garasa* and appellant Vijay Bahadur Singh was armed with *Katta* whereas the unknown persons were also carrying gun. This witness, further claimed that the appellants and unknown persons tied him as well as PW-3 Gupta Nath Pandey, and, thereafter, appellant no.1 Jagdish Singh @ Jhuri Singh and appellant no.3 Vijay Bahadur Singh entered into the chamber of the deceased who was present in his chamber and thereafter, he heard the cry of deceased Sidheshwar Nath Pandey @ Naga Pandey. This witness, further, claimed that the aforesaid appellants came out of the chamber and he noticed that there was blood on their clothes and hands. He also stated that the aforesaid appellants washed the blood and, thereafter, untied him as well as PW-3 (Gupta Nath Pandey) and also threatened them not to disclose to anyone about the alleged occurrence. PW-1 (Sudharama Nand Pandey), further, claimed that out of fear, he went to his house and did not disclose the aforesaid occurrence to anyone. However, he met police on 26.10.1991 and, thereafter, he made his statement before the police. On being cross-examined by the defence, this witness claimed that he had not seen Jodhan Koiry hear the chamber of deceased



when occurrence took place. He, further, admitted that on 26.10.1991 when police came, he went there and made his statement. This witness, further, admitted at para-8 of his cross-examination that he is the agnate of PW-9 as well as PW-3 (Gupta Nath Pandey).

19. PW-2 (Sheo Murat Pandey) claimed that on the alleged date of occurrence while he was going to his boring, he saw seven persons were going towards west side and out of the aforesaid persons, he identified appellant no.1 Jagdish Singh @ Jhuri Singh who was armed with gun, appellant no.2 Ghurahu Singh who was armed with *garasa* and appellant no.3 Vijay Bahadur Singh who was armed with *katta* whereas unknown persons were also carrying guns. This witness, further, claimed that he asked from appellant no.1 Jagdish Singh @ Jhuri Singh as to from where he was coming but appellant no.1 Jagdish Singh @ Jhuri Singh threatened him. This witness, further, claimed that he went to the chamber of deceased Sidheshwar Nath Pandey @ Naga Pandey where he saw the deceased Sidheshwar Nath Pandey @ Naga Pandey lying dead. This witness, further, claimed that he did not disclose the aforesaid incident to anyone but after one day of the alleged occurrence, police recorded his statement. This witness, further, claimed in



his cross-examination that he had seen the appellants coming out from the chamber of the deceased Sidheshwar Nath Pandey @ Naga Pandey and saw them running towards village. This witness further admitted that at the time of alleged occurrence, he had gone to meet his brother Krishnanand Pandey but he did not disclose the aforesaid incident to his brother Krishnanand Pandey. This witness, further, admitted that his statement was recorded by the police on 26.10.1991. This witness, further, stated that he had made statement before the police to the effect that out of fear, he did not disclose to anyone about the alleged occurrence.

20. PW-3 Gupt Nath Pandey also claimed that at the time of alleged occurrence, he along with PW-1 Sudharama Nand Pandey and deceased Sidheshwar Nath Pandey @ Naga Pandey were present at the place of occurrence when appellants and others came there, having fire arms and other weapons in their hands and they tied the hands of PW-1 Sudharama Nand Pandey as well as his hands and, thereafter, appellants entered into the chamber of deceased Sidheshwar Nath Pandey @ Naga Pandey and after some time, he heard sound of firing as well as cry of deceased Sidheshwar Nath Pandey @ Naga Pandey. He also claimed that he saw the appellants coming from the



chamber of deceased Sidheshwar Nath Pandey @ Naga Pandey and at that time, the hands of the appellants were soaked with blood. He also claimed that the appellants untied their hands and threatened not to disclose the aforesaid occurrence to anyone and, thereafter, he came to his house. This witness also admitted that his statement was recorded by the police on 26.10.1991. On being cross-examined by the defence, this witness admitted that the news of death of deceased Sidheshwar Nath Pandey @ Naga Pandey surfaced on next day at about 8 A.M. and he got information about the death of deceased Sidheshwar Nath Pandey @ Naga Pandey from his father Ram Bihari Pandey. This witness further admitted that when he got the information from his father, he was at his *Baithka*. This witness also admitted that he had gone towards west side of his village at 5 P.M. to attend the call of nature but he did not meet any villager while he was going to attend the call of nature. This witness further admitted that he remained at his *Baithka* for whole day on 25.10.1991 but his statement was recorded by police on 26.10.1991.

21. PW-4 Kripa Narayan Singh and PW-5 Gopal Jee Singh are the witnesses of inquest report, seizure list and they have stated nothing about the alleged occurrence.



22. PW-6 Ashok Kumar Pandey is brother of the deceased and this witness admitted that on the alleged date of occurrence, while he was at his house, one Jodhan Koiry came there and informed that deceased Sidheshwar Nath Pandey @ Naga Pandey was killed and, thereafter, he along with PW-8 (Deo Murat Pandey) went running towards the place of occurrence and when reached near door of appellant no.1 Jagdish Singh @ Jhuri Singh, he saw appellants entering into their respective *Baithka* and he also noticed that the appellants were carrying arms. This witness, further, claimed that he along with PW-8 went at the chamber where he found his brother dead. This witness also admitted that his statement was recorded by police at 6 A.M. on 25.10.1991.

23. The attention of this witness was also drawn towards his statement recorded under Section 161 of the Cr.P.C. and this witness stated that he had claimed before PW-11 (Bachcha Singh) to have seen the appellants entering into their *Baithka* having fire arms and other weapons in their hands but PW-11 at para-27 of his cross-examination admitted that PW-6 (Ashok Kumar Pandey) had not made such statement before him. This witness further admitted at para-8 of his cross-examination that when PW-11 (Bachcha Singh) asked him for



the first time in respect of the alleged occurrence, he did not disclose the name of appellants but when in the morning, police recorded his statement, he disclosed the name of appellants and also claimed to have seen the appellants entering into *Baithka*.

24. PW-8 (Deo Murat Pandey) has also claimed that having heard the voice, he along with PW-6 (Ashok Kumar Pandey) went running towards the place of occurrence and when they reached near the house of appellant no.1 Jagdish Singh @ Jhuri Singh, they saw the appellants entering into their houses having fire arm and other weapons in their hands. This witness also claimed that when he reached at the chamber of the deceased, Sidheshwar Nath Pandey @ Naga Pandey, he found deceased lying dead in pool of blood.

25. The attention of this witness was also drawn towards his previous statement and this witness claimed that he had made statement before the police to the effect that he had seen the appellants having fire arms and other weapons entering into their respective houses. This witness, further, admitted at para-4 of his cross-examination that prior to the alleged occurrence, his co-villager Bachan Singh had lodged a criminal case against the appellants and in that case, this witness deposed against the appellants. This witness further admitted that he got



information about the arrival of police in the night of alleged occurrence but he went to his house and remained there and in the next morning, he went to Varanasi. This witness further admitted that he had not talked with anyone in respect of the alleged occurrence and on 26.10.1991, he made his statement before the police. This witness also admitted that at the time of alleged occurrence, some litigation was going on between deceased Sidheshwar Nath Pandey @ Naga Pandey and appellants.

26. PW-9 Jagar Nath Pandey is the informant and he admitted that on the alleged date of occurrence at about 10 P.M. one Jodhan Koiry came at his house and disclosed that deceased Sidheshwar Nath Pandey @ Naga Pandey was killed and after that he along with PW-6 and others went running to his chamber where he found his son lying dead. The statement of this witness goes to show that neither he had seen the actual killing of deceased Sidheshwar Nath Pandey @ Naga Pandey nor had seen the appellants fleeing from the place of occurrence. This witness admitted in his cross-examination that while he was going to the place of occurrence, PW-8 (Deo Murat Pandey) met him on the way.

27. PW-7 Dr. S.P.Gupta is the doctor who did



postmortem examination on the person of the deceased. However, the death of deceased is not in dispute.

28. PW-10 (Ram Manohar Tiwary) is second I.O. who submitted chargesheet against one of the appellants. Similarly, PW-12 (Bijay Kumar Gupta) is a formal witness and there is no material in respect of the alleged occurrence in his deposition.

29. After careful scrutiny of the prosecution evidences, we find that PWs.1 and 3 claimed that when occurrence took place, they were present at the place of occurrence but the statements of PWs-1 and 3 were recorded on 26.10.1991 and before recording their statements, they did not disclose about the alleged occurrence either before the informant or before any other person. PWs.1 and 3 are none-else than co-villagers and agnates of PW-9 (Jagar Nath Pandey). It is also obvious from the evidence available on the record that PW-11 (Bachcha Singh) reached at the place of occurrence in the night of alleged occurrence but even then the PWs.1 and 3 did not come to disclose about the alleged occurrence before PW-11 (Bachcha Singh) and subsequently, after the long delay, the statements of PWs.1 and 3 was recorded by the police. Although PWs.1 and 3 tried to explain the aforesaid delay in their



respective statements but the explanations given by PWs.1 and 3 do not appear to be satisfactory. Moreover, admittedly, the fardbeyan of PW-9 (Jagar Nath Pandey) was recorded after four hours of the alleged occurrence and, therefore, had the PWs.1 and 3 seen the appellants committing the alleged crime, they would have certainly disclosed the aforesaid fact before PW-9 (Jagar Nath Pandey) or before PW-11 (Bachcha Singh) but they did not do so which creates doubt about the claim of PWs.1 and 3.

30. Furthermore, we find, that PWs-3, 6 and 8 improved their statements in course of trial and, for the first time, they claimed before the trial court that they had seen the appellants in suspicious condition entering into their respective houses having fire arms and other weapon in their hands. Therefore, the aforesaid improvements made by PWs-3, 6 and 8 also create doubt about the claim of aforesaid prosecution witnesses.

31. PWs.1 and 3 have claimed before the trial Court that before committing the murder of deceased Sidheshwar Nath Pandey @ Naga Pandey, the appellants had tied their hands but PW-11 did not find any role or anything which had been used for tying the hands of PW-.1 and PW-3 on



the place of occurrence. Furthermore, we have noticed several other infirmities in the depositions of prosecution witnesses and we also find that Jodhan Koiry was not produced by the prosecution, particularly, in the circumstance, when the aforesaid Jodhan Koiry was an important witness as PW-9, got information regarding killing of the deceased Sidheshwar Nath Pandey @ Naga Pandey from aforesaid Jodhan Koiry.

32. After scrutinizing the entire evidences of the prosecution, we find that prosecution could not succeed to prove its case beyond all shadow of reasonable doubts and the appellants are entitled to get the benefit of doubt.

33. On the basis of aforesaid discussion, this criminal appeal is allowed and the impugned judgment of conviction and sentence order are hereby set aside and accordingly, the appellants are acquitted of the charges giving benefit of doubt. The appellants are on bail, they are discharged from the liabilities of their bail bonds.

(Hemant Kumar Srivastava, J)

(Prabhat Kumar Singh, J)

Brajesh Kr./-

AFR/NAFR	NAFR
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