

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.262 of 1994

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1. Rama Singh @ Ram Pd. Singh s/o Late Sri Ramadhar Singh
2. Dharam Nath Singh s/o Late Ram Raj Singh
3. Ram Nath Singh s/o Late Naulakh Singh
4. Phuldeo Singh s/o Late Ram Swarath Singh
5. Jagarnath Singh s/o Late Tribani Singh
6. Ram Darash Singh s/o Late Ramashray Singh
7. Baijnath Singh s/o Late Tribani Singh
8. Subodh Singh s/o Late Ramnarain Singh
9. Ram Pravesh Singh s/o Ram Lochan Singh
10. Ram Pravesh Singh s/o Parikshan Singh
All are residents of vill- Kolwara P.S. - Saraiya (O.P. Jeetpur) District –
Muzaffarpur
11. Niteshwar Singh s/o Ramsewak Singh r/v- Patedhi Bhie Khan P.S. -
Vaishali District - Vaishali

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Arun Kumar Tripathi, Amicus Curiae
For the Respondent/s : Mr. Binod Bihari Singh, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL JUDGMENT

Date : 26-03-2019

Seen the report submitted by the District Judge
Muzaffarpur annexing the preliminary report submitted by Ist
Additional District and Sessions Judge, Muzaffarpur along with
subsequent administrative order based thereon.

2. Office to pursue till procurement of the concerned
Departmental enquiry report.

3. On repeated call none responded on behalf of
appellants on account thereof, Mr. Arun Kumar Tripathi has



been requested to assist the court as an Amicus Curiae.

4. Appellants Rama Singh @ Ram Prasad Singh, Dharam Nath Singh, Ram Nath Singh, Phuldeo Singh, Jagarnath Singh, Ram Darash Singh, Baij Nath Singh, Subodh Singh, Niteshar Singh, Ram Pravesh Singh s/o Ram Lochan Singh, Ram Pravesh Singh s/o Parikshan Singh have been found guilty of an offence punishable under Section 353 of Indian Penal Code and each one has been sentenced to undergo R.I. for one year, under Section 147 and 149 of Indian Penal Code and for that, no separate sentence has been inflicted by the 5th Additional District & Sessions Judge, Muzaffarpur in connection with Sessions Trial No. 184/87 vide judgement of conviction and order of sentence dated 01.08.1994.

5. Dinesh Prasad, A.S.I. who was O.C. of the Jaitpur O.P. (P.W.-13) gave his fardbeyan while he was admitted at P.H.C. Saraiya on 18.07.1986 disclosing therein that in the evening of 17.07.1986 the officials of Gaighat P.S. namely, Digambar Prasad (P.W.-6) along with other police officials came and requested him to assist in recovery of one Rita Kumari, alleged victim of Gaighat P.S. Case No. 60/86 having been kept by Rama Singh @ Ram Prasad Singh of village Kolwara. Accordingly, they all have gone to the place of Rama Singh



where, found the victim Rita Kumari as well as Rama Singh. They introduced themselves to be the police officials and then, took Rita Kumari in their custody which was protested by the aforesaid Rama Singh enduring said course used force. As such, Rama Singh was also taken to police jeep. During midst thereof, Rama Singh began to shout attracting the villagers who assembled armed variously, attacked upon the police party assaulted, snatched away one of the rifles from a Sepoy and seeing, no alternative to defend themselves lastly, firing was made, as a result of which one of the assailants sustained injury. Then thereafter, they proceeded therefrom along with Rita Kumari as well as Rama Singh @ Ram Prasad Singh. On the basis of the aforesaid fardbeyan, Saraiya P.S. Case No. 94/86 was registered followed with an investigation as well as submission of charge-sheet, facilitating the order of cognizance of an offence exclusively triable in the Court of Session. Hence, after having been committed, trial commenced and concluded in a manner subject matter of instant appeal.

6. Defense case as is evident from the mode of cross-examination as well as Statement so recorded under Section 313 of the Cr.P.C. is that of complete denial. It has also been pleaded that no such kind of occurrence had ever taken place. Rather, at



an earlier occasion there was dacoity in the village wherein dacoits have raided the village being in police uniform and so, also this time they perceived the similar situation whereupon, there was some sort of scuffle but, after getting proper identification, they withdrew, even then this case has been instituted at the instance by their enemies on false and frivolous allegation. However, nothing has been adduced in their defence.

7. In order to substantiate its case altogether thirteen P.Ws have been examined on behalf of prosecution who are P.W. 1 A.S.I. Bindeshwar Pd. Rai, P.W. 2 Constable Indrajit Paswan, P.W. 3 Constable Bisheshwar Rai, P.W. 4 A.S.I. Suresh Paswan, P.W. 5 Mahendra Yadav, P.W. 6 S.I. Digambar Pd., P.W. 7 Satrugan Pd. Singh, P.W. 8 Awadhesh Singh, P.W. 9 Jitendra Pd. Singh, P.W. 10 Brighunath Singh, P.W. 11 Ramnandan Singh, P.W. 12 Dr. A.K. Sinha, P.W. 13 S.I. Dinesh Pd. The prosecution has also exhibited the following documents:

1. Exhibit -1 Injury Report dated 28.11.90
2. Exhibit – 2 Fardbeyan Dated 20.02.91
3. Exhibit – 3 F.I.R. 20.02.91

As stated above, nothing has been adduced on behalf of defense.

8. The learned Amicus Curiae while assailing the



judgement of conviction and sentence, mainly attacked upon the deficiency persisting on the record and further, it has been submitted that as prosecution has failed to prove the manner of the occurrence on account thereof, the finding so recorded by the learned lower court is not at all sustainable. Apart from this, it has also been submitted that from the evidence of the witnesses it is apparent that Rita Kumari is in nucleus who has not been examined at the end of the prosecution. It has further been submitted that father of Rita Kumari, Ramnandan Singh P.W.-11 has been tendered. There happens to be no document on the record to substantiate that Rita Kumari was ever kidnapped and for that Gaighat P.S. Case No. 60/86 was registered as no F.I.R. of Gaighat P.S. Case No. 60/86 has been lodged. It has also been submitted that there happens to be no requisition having at the end of the Gaighat police that means to say P.W. 6, the police official, who failed to identify himself being an investigating officer of the alleged case having armed with an order of superior police officials to conduct raid at village Kolwara being lying within Saraiya (Jaitpur) O.P., nor having an order of the court by way of search warrant. In likewise manner, order of the court/ superior police official is required, so alleged recovery was to be effected after overlapping the jurisdictional



avenue. In likewise manner having failed to substantiate by way of excepting the diary of Jaitpur O.P. that assistance was solicited by P.W.-6 for recovery of Rita Kumari from the place of Rama Singh @ Ram Prasad Singh, is a circumstance which suggest that the police officials, who ever may be, were not at all they were at the place of occurrence in due discharge of their official duty and so, the finding of the learned lower court convicting the appellants under Section 353 of the Indian Penal Code was not maintainable. Furthermore, it has also been submitted that from the evidence of P.W.-7, P.W.-8, P.W.-9, P.W.-10, it is apparent that there happens to be fragrance of animosity coming out from their evidences. Further, if their evidences are minutely gone through also suggest the illegal activity of the police officials. So, in sum and substance the prosecution case lacks its credibility whereupon, the judgement of the conviction and sentence so recorded by the learned lower court is fit to be set aside.

9. The learned Additional Public Prosecutor while substantiating the finding so recorded by the learned lower court, has submitted that from the evidences whatever been available on the record, it is apparent that prosecution has succeeded in substantiating its case to the effect that in due



discharge of official duty the police officials were present at the place of accused Rama Singh @ Ram Prasad Singh. During course of recovery of alleged victim of Gaighat P.S. Case No. 60/86 namely, Rita Kumari, the police officials were assaulted, not only assaulted there was murderous attack upon them. Further, by such activity they were prevented for due discharge of their official duty and so, the accused persons/appellants have rightly been convicted and sentenced. However, learned Additional Public Prosecutor is fair in submitting that the conviction so recorded under Section 149 of the Indian Penal Code independently would not survive, as recorded by the learned lower court.

10. Before coming to the evidence of the witnesses, it is apparent from the nature of witnesses that P.W. 2, P.W. 5, P.W. 11 have been tendered. P.W. 12 is Dr. A.K. Sinha who had examined Ram Pravesh Singh, one of the appellants who had sustained firearm injury. P.W. 3 had not identified any accused. Furthermore, it is also evident that save and except P.W. 6 Digambar Prasad, none of the officials of Gaighat P.S. has come up nor there happens to be any kind of explanation at the end of the prosecution over non-examination of those officials. All the witnesses had not spoken a word with regard to having



permission from the police high-ups or from the Court to search out place of Rama Singh being outside jurisdiction of the Gaighat P.S. F.I.R. of Gaighat P.S. Case No. 60/86 has not been made an exhibit, nor the station diary of Jaitpur O.P. has been exhibited. Appellant victim of Gaighat P.S. Case No. 60/86 has also not been examined. The doctor has not been examined nor the injury report, if any, has been exhibited relating to injury sustained by the police officials. I/O also has not been examined. There happens to be no documentary proof to substantiate the prosecution case that any step was taken at the end of the police officials of the Gaighat P.S. in accordance with section 166 of the Cr. P.C.

11. In the background of aforesaid deficiency, now one has to see whether prosecution succeeded in proving its case as well as conviction of these appellants are sustainable in the eye of law. It is needless to say that T.I.P. has not been conducted. From the evidence of the police officials it is manifest that they were not at all accustomed with the appellants/accused. Though, some of them have disclosed that there was *Lalten* burning at the time of conduction of raid on 17.07.1986 at about 10.30 p.m., but the aforesaid disclosure has become doubtful when the *fardbeyan* has been gone through



whereunder, there happens to be no disclosure with regard to source. When the informant P.W. 13 during course of his evidence introduced by narrating that during course of whole occurrence Headlight of Jeep was on admitted at para 8 during course of his cross-examination that he had not narrated the same during course of recording of *fardbeyan* that Headlight of Jeep was on and, in the light thereof, he had identified the accused. Apart from this, from para 6 of P.W. 13, it is evident that he had categorically stated that no T.I.P. was conducted in this case. The persons who have accompanied them have disclosed the name of the accused persons. The same happens to be the evidence of P.W. 6, the Officer Incharge of the Gaighat P.S. who during course of cross-examination at para 3 had disclosed that he was not knowing any of the accused since before. Because of the fact that it was dark night on account thereof he could not identify any of the accused. When the evidence of other police officials is taken, P.W. 1, during course of examination in chief though elaborated the names of other accused but, admitted during course of cross-examination at para 6 that during course of Statement before the police he had named only Rama Singh as an accused, P.W. 4 had named the accused persons out of 300-400 persons assembled there,



claimed that as he used to visit the village on account thereof, he was knowing them since before but, during course of cross-examination at para 7 the aforesaid version has become doubtful.

12. Now coming to the evidence of P.W. 7, P.W. 8, P.W. 9 and P.W. 10, it is evident that they are relative of the P.W. 11 Ramnandan Singh, father of the alleged victim Rita Kumari as well as appellant Rama Singh @ Ram Prasad Singh. During examination in chief they have deposed that Rama Singh who happens to be relative being Mausera Bhai of Ram Nandan Singh brought Rita Kumari and then, had not allowed Ramnandan Singh to take her back and for that, they have also requested but, having been declined, ultimately led institution of Gaighat P.S. Case No. 60/86 at the end of Ramnandan Singh and then narrated the subsequent event regarding presence of police officials for recovery of the victim which was facilitated but, on an alarm raised by Rama Singh @ Ram Prasad Singh, the villagers assembled and during course thereof, they tried to prevent the police officials and assaulted the police officials in order to prevent due discharge of the official duty but, during course of cross-examination P.W. 6 at para 8 stated that 30-40 persons have assembled near Jeep who were the rioters as well



as bystanders. In para 11 he had further stated that police had not taken service of the local Chowkidar, Dafadar and the same happens to be the evidence of P.W. 8 para 5. In para 8 he had also stated that one of the accused Niteshar Singh happens to be of district Vaishali and is brother-in-law of Subodh Singh. The evidence of P.W. 8 has become doubtful as, in para 9 of his cross-examination he had stated that while the accused persons were assaulting all the persons, he was not at all touched by them. P.W. 10, during course of examination in chief reiterated the same version but, during course of cross-examination, from para 8 it is evident that there happens to be vagueness over *factum* of identification.

13. In the background of aforesaid deficiency persisting in the evidence of the prosecution witnesses coupled with the fact that there happens to be specific disclosure at the end of P.W. 4 that P.W. 6 Digambar Prasad had come along with armed forces having one Hawaldar and three Sepoy but, contradicted at the end of P.W. 6 as he had not disclosed during course of his evidence that he along with armed forces, Hawaldar came to Jaidpur O.P. and then raid was conducted, for want of legal procedure to be followed in accordance with section 166 of the Cr.P.C. Further, whether the victim was minor



or major, whether she was at the place of Rama Singh with her consent or not, for want of search-cum-seizure list to be prepared for the recovery of the aforesaid alleged victim Rita Kumari suggests otherwise and that being so, the judgement of conviction and sentence recorded by the learned lower court did not find favour consequent thereupon, the same is set aside. The appeal is allowed.

14. Appellants are on bail hence are discharged from liability of the bail bond.

15. First and last page of the judgement be handed over to the learned Amicus Curiae for the needful.

(Aditya Kumar Trivedi, J)

vinita/-

AFR/NAFR	AFR
CAV DATE	NA
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