

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.3509 of 2018

Arising Out of PS. Case No.-92 Year-2000 Thana- LAURIA District- West Champaran

Indrajeet Sharma, Son of Late Narsingh Sharam, Resident of Village- Parorha
Barhaipatti, P.S.- Lauriya, District- West Champaran.

... .. Appellant/s

Versus

The State of Bihar.

... .. Respondent/s

with
Criminal Appeal (SJ) No. 3671 of 2018

Arising Out of PS. Case No.-92 Year-2000 Thana- LAURIA District- West Champaran

1. Shambhu Sharma, S/o Late Belash Sharma,
2. Nathu Sharma, S/o Late Narsingh Sharma, All R/o Vill.- Paroraha Badhi Patti,
P.S.- Lauriya, Distt.- West Champaran.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

(In Criminal Appeal (SJ) No. 3509 of 2018)

For the Appellant/s : Mr. Umesh Chandra Verma-Advocate
Mr. Abhishek Kumar-Advocate

For the Respondent/s : Mr. Bipin Kumar-A.P.P.

(In Criminal Appeal (SJ) No. 3671 of 2018)

For the Appellant/s : Mr. Gauri Shankar Thakur-Advocate

For the Respondent/s : Mr. Sujit Kumar Singh-A.P.P.

CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL JUDGMENT

04-01-2019

Both these appeals have been heard together and

are being disposed of by a common judgment as arise out from
common judgment of conviction dated 21.08.2018 and order of
sentence dated 25.08.2018 passed by the Additional Sessions
Judge, F.T.C. No.II, West Champaran at Bettiah relating to
Sessions Trial No.164 of 2001, whereby and whereunder all the



appellants namely Indrajeet Sharma, Shambhu Sharma and Nathu Sharma have been found guilty for an offence punishable under Section 364 I.P.C. and sentenced to undergo R.I. for ten years as well as to pay fine appertaining to Rs.1,000/- and in default thereof, to undergo R.I. for one month, additionally.

2. Chokati Sharma (PW-5) gave his fard-bayan on 21.09.2000 at about 8.30 A.M. at his village divulging the fact that while he along with his son Nand Lal Sharma (deceased) and villager Vishwanath Sharma, relative Brahmdev Sharma was sitting at his Baithka and were gossiping in the light of lantern at about 9.00 P.M. on 20.09.2000, all of a sudden, Indrajeet Sharma Belash Sharma, Shambhu Sharma, Nathu Sharma, Girja Sharma, Jagdish Sharma, Sadabrikch Sharma, Madan Sharma armed with gun came at his Baithka, caught hold his son Nand Lal Sharma, dragged and took him away. During course thereof, they have also fired. At that very time, they thought that his son has been kidnapped for ransom, but today morning, his daughter-in-law Kalinda Devi and Rukha Devi while have gone to Sareh returned weeping and disclosed that his son Nand Lal has been murdered by means of firearm. After getting such information, he along with so many villagers rushed to the spot and found the dead body of Nand Lal Sharma



lying in the paddy field of Baijnath Hajra. It has further been disclosed that the animals have eaten away flesh from different parts of body. It has also been disclosed that for the last 4-5 years, he happens to be on strained relationship with Indrajeet Sharma, who was successively threatening that he will do away with the life of Nand Lal Sharma.

3. After registration of Lauriya P. S. Case No.92 of 2000, investigation was taken away and after concluding the same, chargesheet has been submitted against Belash Sharma, Indrajeet Sharma, Nathu Sharma and Shambhu Sharma, who accordingly, faced trial. During midst of trial, Belash Sharma died and so, proceeding against him was dropped while the appellants met with the ultimate result, subject matter of instant appeal. However, from the chargesheet, it is evident that nothing has been disclosed regarding the remaining accused so named in the Fard-bayan.

4. Defence case, as is evident from mode of cross-examination as well as statement recorded under Section 313 of the Cr.P.C. is that of complete denial. Furthermore, it has been pleaded that deceased was murdered by the dacoits, but on account of prevailing animosity, the informant got the accused/appellants involved in this case after hatching a conspiracy



whereunder false and frivolous allegation has been attributed. However, neither oral nor documentary evidence has been adduced in support thereof.

5. In order to support its case, prosecution has examined altogether five PWs, who are PW-1, Vishwanath Sharma, PW-2, Prabhu Sah, PW-3, Amresh Sharma, PW-4, Sarabjeet Sharma and PW-5, Chokati Sharma. No documentary evidence has been adduced on behalf of prosecution. In likewise manner, defence also could not produce either oral or documentary evidence.

6. After going through the record, it is evident that I.O. and doctor have not been examined. The accused persons/ appellants were charged for an offence punishable under Section 364, 302/34 of the I.P.C. and under Section 27 of the Arms Act. While concluding on the score, as is evident from Para-13 of the judgment, the learned lower Court has held that on account of non-examination of the doctor, the cause of death is not known. He had not formed an opinion whether deceased was done to death or not, more particularly in the background of the fact that at the time of recording of fard-bayan, the dead body of deceased was already there coupled with the fact that all the witnesses that means to say, PW-1 to PW-5 have consistently



deposed regarding causing murder of the deceased Nand Lal Sharma and further, during course of suggestion of PW-1, Para-22 as well as PW-5, Para-16, death by firearm is found properly suggested.

7. Furthermore, it is evident from the judgment impugned that learned lower Court had failed to record its finding whether accused/ appellants were acquitted for an offence punishable under Section 302/34 of the I.P.C. as well as Section 27 of the Arms Act rather from perusal of Para-13, it is evident that learned lower Court had not given its finding relating thereto. On the contrary, formed an opinion that on proper scrutiny of the evidence the appellants/ accused are liable for an offence punishable under Section 364 of the I.P.C. and accordingly, convicted and sentenced for. The aforesaid exercise of the learned lower Court happens to be contrary to the spirit of law as the occurrence so alleged was committed in continuity just after lifting the deceased and as there was no kidnapping in accordance with Sections 360, 361 I.P.C., hence no offence under Section 364 I.P.C. would be attracted as the trial Court is expected to consider all the relevant aspect while delivering judgment and further, specific finding with regard to offences whereunder accused were charged by way of acquitting or the



offence whereunder accused is to be convicted. Such activity of the learned lower Court made the judgment impugned hazy and would have warranted its remittance after setting it aside, but whether such exercise would be fruitful, is the sole question, which is to be answered in the facts and circumstances of the case?

From the evidence of **PW-2**, it is evident that though he claimed to have seen the miscreants taking away the victim/ deceased Nand Lal Sharma, but he could not identify them. He has further stated that Chokati Sharma disclosed that Indrajeet Sharma, Kailash Sharma, Shambhu Sharma, Nathu Sharma, Madan Sharma, Girija Sharma, Jagdish Sharma, Sadabrikch Sharma took his son away. Nand Lal Sharma was done to death and his dead body was found on the following day in the paddy field. He has further stated that those persons were on strained relationship with Chokati Sharma. During cross-examination at Para-6 and 7, he has stated that he had seen accused persons taking away Nand Lal Sharma, but he had not identified any of them. **PW-3**, during his examination-in-chief, has reiterated the version that after hearing hulla, he came out from his house and had seen the miscreants taking away the deceased Nand Lal Sharma whose dead body was found on the



following day lying in a paddy field as he failed to name the miscreants, hence on that very score, he was declared hostile and his attention has been drawn up. **PW-4** has stated that on the alleged date and time of occurrence, after hearing the firing sound, he came out from his house and then, saw miscreants dragging Nand Lal Sharma. He had identified only one Indrajeet Sharma amongst them. Then thereafter, miscreants threw dead body of Nand Lal Sharma after causing murder. They have seen his dead body in the following morning. Identified Indrajeet Sharma while disowned to identify the others as a member of the group. During cross-examination at Para-2, there happens to be cross-examination relating to the habitation of the village. In Para-3, he has stated that for the first time, he is deposing before the Court. He has shown ignorance with regard to land dispute against them. He has further stated that at the relevant time, there was terror of dacoits in the village. In Para-4, there happens to be genealogical table of his family and further, admitted to be nephew of the informant. He has further stated that he is unable to disclose the exact number of miscreants. He had seen only one. He had not seen others. Accused had not tried to conceal their face. When he came out from his house, none was present. It was moonlit night. He had identified one



person. None of the villagers was amongst the miscreants. He had made uproar regarding coming of dacoits. He had also raised alarm that dacoits are taking away one person. In Para-5, he has stated that at that very time, he was not possessing torch. Then, there happens to be disclosure with regard to presence of Gram Raksha Wahini in the village in order to protect the village from dacoits. He has further stated that at that very time, he heard sound of two rounds of firing. At Para-6, he has stated that he had not seen anybody causing murder of Nand Lal Sharma. He has further stated that he had identified only one accused during course of occurrence, who others were, he is unable to say. In Para-7, there happens to be contradiction. In Para-8, he has stated that Chokati Sharma has instituted this case. He has further stated that this case has been launched against eight accused persons at his behest, might be corrected, but he had identified only person and then, is the suggestion that on account of animosity due to land dispute, these accused persons have been falsely implicated getting an opportunity. He denied the suggestion that deceased was murdered by the dacoits. None of the accused was responsible for the same.

8. PW-1 is Vishwanath Sharma, he during his examination-in-chief, has stated that about three years ago, he



was sitting at his Baithka. Baithka of Chokati Sharma lies contiguous to his Baithka. It was 8-9 P.M. He was talking with his relative Brahmdev Sharma, Nand Lal Sharma and Chokti Sharma were present there. During midst thereof, Sohan Sharma came to purchase Gutkha and after purchasing the same, he returned back. Thereafter, Indrajeet Sharma, Bilash Sharma, Madan Sharma, Shambhu Sharma, Girja Sharma, Jagdish Sharma, Sadabrikch Sharma and Nathu Sharma armed with gun, respectively, came and caught hold Nand Lal Sharma, they dragged him towards North to the village and during course thereof, they have fired 3-4 rounds. Because of the fact that they were not possessing arms on account thereof, they have not chased. They also thought that Nand Lal Sharma might have been kidnapped for ransom. On the following morning, people have seen dead body of Nand Lal Sharma having firearm injury, whereupon raised alarm. He had also gone and seen the dead body. Some flesh was eaten away by the animals. It has further been disclosed that at an earlier occasion, there was land dispute with the accused persons, but the same has been resolved through Panchayati. Identified the accused. During cross-examination at Para-8, he has stated that informant as well as accused Bilash Sharma happen to be his uncle. At Para-11, he



has admitted that the uncle of deceased namely Suresh Sharma has brought him to depose in this case and for that, he will pay the wages. In Para-12, he has shown presence of Suresh Sharma in the court. Then thereafter, at Para-17, he has denied the suggestion that the land dispute is still persisting as it has not been resolved through Panchayati and on account thereof, accused persons have been falsely implicated. In Para-18, he has denied the suggestion that they have forcibly constructed the house over land of Indrajeet Sharma. In Para-21, divulged that the shop belongs to Chokati Sharma. Then has denied the suggestion as flashed that under Para-22 that he is the person, who got deceased murdered by his henchmen. In Para-23, he has stated that he had not seen the accused persons killing Nand Lal Sharma. Then has denied the suggestion that accused persons have been falsely implicated in this case due to land dispute.

9. PW-5 is the informant, he has stated that on the alleged date and time of occurrence, he was sitting at his Baithka along with Vishwanath, Brahmdev, Nand Lal, Indrasen. At that very time, Indrajeet, Belash, Shambhu, Nathu Sharma, Jagdish Sharma, Girija Sharma, Madan Sharma, armed with gun came. Indrajeet caught hold his son Nand Lal Sharma. During



course thereof, pushed him, Nand Lal was taken away towards North to village. The persons, who were sitting have disclosed that after realizing money, Nand Lal will be spared. Nand Lal was not spared rather he was murdered in the Sareh, which they came to know on the following day by his daughter-in-law Kalinda Devi, who had gone towards North to the village. Police came and recorded his fard-bayan. Identified the accused. During cross-examination, the accused persons bifurcated themselves in two groups. At the end of Belash, Shambhu Sharma and Nathu Sharma. He has disclosed under Para-3 that their names were disclosed by Brahmdev Sharma. He had not identified them during course of the occurrence. On behalf of Indrajeet Sharma at Para-5, there happens to be cross-examination regarding status of the family in order to show the relationship of PW-1, PW-3 and PW-4 with the informant. At Para-6, there happens to be cross-examination over topography of the village, location of his house as well as house of the accused having been intervened by one house. In Para-7, he has admitted that he had not filed any kind of Sanha against Indrajeet. Indrajeet Sharma has not been made an accused in any other case, save and except the present one. Indrajeet Sharma is not an accused even at the instance of others. Then



there happens to be cross-examination with regard to the land over which his house stands. In Para-8, he has stated that he had not seen killing of Nand Lal Sharma, but he had seen while he was being dragged. In Para-8, he has stated that accused persons came. They came from Western side. None of them have concealed their face. In Para-10, he has stated that at the time of occurrence, torch was in his hand, again corrected that it was not, lantern was burning. Police was informed in the morning. None had gone to police station in the night. Chaukidar was not in his village. Then has stated that at the time of occurrence after hearing sound of firing as well as uproar, some people have assembled while some have hidden themselves inside their house, but he is unable to disclose their names. In Para-9, he has stated that at the time of occurrence, there was terror of dacoits in the locality. No letter asking for levy was served upon him by dacoits. People used to go inside their house just after sunset. Police station lies three kosh (six mile) away from his village. Then has admitted presence of Gram Raksha Wahini and one of its member was Indrajeet Sharma. Then, he has been cross-examined with regard to non-identification of Nathu Sharma, Belash Sharma, Shambhu Sharma in Court. In Para-13, he has disclosed that fard-bayan was recorded at 8.30 p.m. at his



Baithka. At that very time, so many persons were present there, but he is unable to disclose their names. In Para-14, he has stated that at the time of occurrence, there was five rounds of firing, three rounds of firing were fired in successive manner and two rounds later on. Firing was made by the dacoits aiming the persons, but they managed to escape themselves. People have hidden out of fear. Some came out. The miscreants, just after coming, began to fire. In Para-15, he has stated that neither he nor his family members chased the dacoits. Again said that after occurrence, they have gone to some extent, then again returned back to their darwaza. In Para-16, he denied the suggestion that dacoits have killed Nand Lal Sharma as they failed to pay levy, but on account of prevailing land dispute, got the accused persons involved in this case.

10. From the evidence as discussed hereinabove, it is evident that apart from I.O. and doctor, Brahmdev Sharma has not been examined. It is further evident that PW-1 has not been cross-examined on the material aspect and so, his evidence remained unchallenged. When his evidence has been gone through, it is apparent that he has shown Baithka of PW-5 contiguous to his Baithka where has shown presence of PW-5 Chotki Charma along with his son Nand Lal Sharma while he



had shown presence of himself as well as Brahmdev Sharma at his Baithka. He has not shown source of identification, although he has stated that one Suresh Sharma had come at that very moment to purchase Gutkha and after his return, the accused persons came. Furthermore, from his cross-examination at Para-21, had shown Chotki Sharma to be proprietor of the shop. PW-5, during his evidence has not shown presence of Baithka of PW-1 contiguous to his Baithka rather shown PW-1 and Brahmdeo at his Baithka. He has also kept mum over presence of shop. This has got relevance as there happens to be inconsistency amongst PW-1 and PW-5 and so, on account of non-examination of I.O., the matter remained unresolved, which is found an adverse to the prosecution, more particularly when none others have shown presence in such manner. Apart from this, when the evidence of PW-5 is gone through, it is evident that though during his examination-in-chief, he had identified the appellants including others to be the persons, who took away Nand Lal Sharma and thereafter, his dead body was found having firearm injuries over the dead body. But during course of cross-examination, he changed the scenario and identified the dacoits to be responsible, who dragged Nand Lal Sharma and further, under Para-14 has stated that dacoits have had fired at



the villagers aiming them, which they escaped. It is also evident from the deposition of the witnesses including PW-5 that appellant Indrajeet Sharma has his house adjacent to the house of PW-5, intervened by one house. They have not stated that any of them had gone to the house of Indrajeet and found him absent. They have also shown presence of Indrajeet to be one of the member of village Raksha Dal. In the background of aforesaid inconsistency as well as deficiencies, which go to the root, did not allow any alternative option than to set aside the judgment impugned.

11. Consequent thereupon, the judgment of conviction and sentence recorded by the learned lower Court is set aside. Both the appeals are allowed. Appellants are on bail, hence are discharged from its liability.

(Aditya Kumar Trivedi, J)

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AFR/NAFR	A.F.R.
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