

Vs.

Vs.

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Court : Patna

Decided On : Aug-29-2013

Judgement :

Patna High Court CR. APP (DB) No.364 of 1990 dt.29-08-2013 1 IN THE HIGH COURT OF JUDICATURE AT PATNA Criminal Appeal (DB) No.364 of 1990
===== 1. Baijnath Singh @ Baidyanath Singh @ Baiju Singh son of Ram Uchit Singh 2. Ram Uchit Singh son of Late Bhagwat Singh 3. Chandra Mauli Singh son of Ram Badan Singh 4. Raj Singh @ Raju Singh 5. Ram Udgar Singh @ Bhulo Singh @ Raja Singh both are sons of Late Deo Narayan Singh 6. Nawal Singh son of Late Satya Narayan Singh @ Sato Singh 7. Mani Kant Singh 8. Shrikant Singh @ Kantu Singh, both sons of Late Ram Bhajan Singh All are residents of village Telan Jokia, P.S. Bhagwanpur, District Begusarai Appellants Versus The State of Bihar Respondent with Criminal Appeal (DB) No. 380 of 1990
===== Ghuran Singh alias Chandra Shekhar Singh son of Ram Bhajan Singh, resident of village Jokia, P.S. Bhagwanpur District Begusarai Appellant Versus The State of Bihar Respondent ===== Both the above appeals are against the judgment of conviction and order of sentence dated 31.08.1990 passed by Sri Madan Mohan Verma, 2nd Additional Sessions Judge, Begusarai in Sessions Tr. No. 146 of 1977/87 of 1987.
===== Appearance : (In CR. APP (DB) No. 364 of 1990) (In CR. APP (DB) No. 380 of 1990) For the appellants : Mr. Neeraj Kr. alias Sanid Advocate For the respondents: Mr. Ajay

Mishra, Addl.P.P. Patna High Court CR. APP (DB) No.364 of 1990 dt.29-08-2013
2 ===== CORAM:
HONOURABLE MR.JUSTICE SHYAM KISHORE SHARMA AND HONOURABLE
MR.JUSTICE AMARESH KUMAR LAL ORAL

JUDGMENT

(Per: HONOURABLE MR.JUSTICE SHYAM KISHORE SHARMA) Date:

29. 08-2013 ----- Both the above appeals have been taken up together as they have arisen out of one judgment dated 31.08.1990 delivered by learned 2nd Additional Sessions Judge, Begusarai in Sessions Trial No. 146 of 1977/87 of 1987 whereby all the nine appellants of both the appeals were found guilty under Section 302/149 of the Indian Penal Code and each of them were sentenced to undergo rigorous imprisonment for life. Appellants Bajinath Singh alias Baidyanath Singh alias Baiju Singh, Mani Kant Singh and Ghuran Singh alias Chandra Shekhar Singh were further found guilty under Section 148 of the Indian Penal Code and were sentenced to undergo rigorous imprisonment for two years. The sentences were ordered to run concurrently.

2. The above two appeals are with regard Patna High Court CR. APP (DB) No.364 of 1990 dt.29-08-2013 3 to an occurrence of about four decades earlier. It was on 11.04.1974 when Ram Swaroop Paswan was killed, for which fardbeyan (Ext.3) was given at 9.00 A.M. on that date at Bhagwanpur Police Station which was recorded by Sub-Inspector of Police Sri Ram Nandan Bhagat (P.W.13). In the fardbeyan, Sanjho Devi (P.W.12), wife of Lalchand Paswan, disclosed that she was owning 17 kathas of land situated in the east of the village. At that time, wheat, gram and barley crops were ripped for harvesting. In the early morning on the date of occurrence, the informant had been to her field along with her brother Bhagwat Paswan (P.W.10), gotanis Sohago Devi (P.W.5) wife of Paltan Pasawan and Kusuma Devi (P.W.1) wife of Suraj Paswan, for harvesting crops. At about 5.00 A.M. when the sun was about to rise, the informant noticed 15 to 20 persons having lathis and bhalas shouting for assault arrived at the place of occurrence. Ram Badan Singh wanted to know as to why the wheat was being harvested. The informants brother Ram Swaroop Paswan who is Patna High Court CR. APP (DB)

No.364 of 1990 dt.29-08-2013 4 deceased of the case told that the land belongs to his sisters son Rajgir Paswan (P.W.14), so he would cut the crops. On hearing such retaliation, Ram Badan Singh ordered for assault. On this, accused Baiju Singh son of Ram Uchit Singh pierced a bhala blow in the stomach of Ram Swaroop Paswan who fell down. Thereafter accused Mani Kant Singh struck bhala blow in his leg and accused Ghuran Singh gave a bhala blow in his arm. Accused Ramadhar Singh (not sent up for trial) assaulted him with lathi. Rest accused assaulted Ram Swarrop Paswan but informant could not notice their weapons. Ram Swaroop Paswan died in the field itself. Barring the above accused, accused Chandra Mauli Singh, Rajo Singh, Bhullu Singh, Satto Singh, Uchit Singh, Srikant Singh, Nawal Singh, Kamli Singh (not sent up for trial) and Rameshwar Singh (not sent up for trial) were identified as the culprits who were at the place of occurrence. On hue and cry, the persons present in the vicinity namely, Ramdhani Sahani (not examined), Kishundeo Paswan (P.W.3), Ram Patna High Court CR. APP (DB) No.364 of 1990 dt.29-08-2013 5 Lochan Singh (P.W.11), Bindeshwar Thakur (P.W.9) and Ramjee Mahto (P.W.2) arrived and witnessed the occurrence. The motive of the occurrence was that the disputed land was under litigation on which the informant has obtained decree and after obtaining decree, she is in possession. The fardbeyan was witnessed by Kapildeo Pathak and Raj Kumar Sah (both not examined) which resulted into a formal F.I.R. (Ext.4) of Bachchwara (Bhagwanpur) P.S.Case No. 12 (4)1974 for offences under Sections 147,148,149 and 302 of the Indian Penal Code. The investigation commenced. Inquest report (ext.1) was prepared, place of occurrence was inspected, seizure of blood was made, post mortem report (ext.2) was obtained, statements of witnesses were recorded and after the case was found to be true, chargesheet was submitted. Cognizance was taken and after completing all paraphernalia the case was committed to the court of sessions where charge under Section 302/34 of the Indian Penal Code was framed against accused Baidyanath Singh @ Baiju Singh, Mani Kant Singh Patna High Court CR. APP (DB) No.364 of 1990 dt.29-08-2013 6 and Ghuiran Singh whereas charge under Section 302/149 of the Indian Penal Code was framed against accused Sri Kant Singh, Sato Singh, Raja Singh, Bhulo Singh @ Ram Udgar Singh, Ram Uchit Singh, Chandra Mauli Singh and Nawal Singh. Charges were explained to the accused persons to which they pleaded

innocence. Hence trial proceeded.

3. The defence of the accused persons is that prior to the present occurrence, one person from the family of the accused persons was murdered in which the informants family were accused. Their further defence is that co-accused Ghuran Singh alias Chandra Shekhar Singh was 75 years of age and was not capable at all to cause any overt act. Further defence is that the inquest report mentions that it was prepared at 9.00 A.M. at the place of occurrence though fardbeyan was recorded at 9.00 A.M. at the police station and the distance between the both places was about 8 miles. So it was not possible that fardbeyan and the inquest report were Patna High Court CR. APP (DB) No.364 of 1990 dt.29-08-2013 7 simultaneously prepared. So it has been submitted that inquest report, fardbayn and all related documents in the present case were interpolated at the behest of the Investigating Officer and whole purpose was to ruin the appellants family.

4. Before the trial court, the prosecution in order to establish its case has examined 18 witnesses. They are: P.W.1 Kusma Devi, P.W.2 Ramjee Mahto, P.W.3 Kishundeo Paswan, P.W.4 Ram Bahadur Paswan, P.W.5 Sohago Devi, P.W.6 Ramdeo Mahto, P.W.,7 Birju Paswan, P.W.8 Dr.B.R.Meharia who held post mortem over the dead body of the deceased, P.W.9 Bindeshwari Thakur, P.W. 10 Bhagwat Paswan, P.W.11 Ram Lochan Singh, P.W.,12 Sanjho Devi, the informant of the case, P.W.13 Ram Nandan Bhagat, Investigating Officer of the case, P.W 1.Rajgir Paswan, P.W.15 Manohar Mochi, P.W.16 Jagdish Prasad, P.W.17 Baijnath Singh and P.W.18 Kamleshwari Roy.

5. The defence has also examined two formal witnesses. They are: D.W.1 Bhubneshwar Patna High Court CR. APP (DB) No.364 of 1990 dt.29-08-2013 8 Prasad and D.W.2 Ram Pratap Rai.

6. P.W. 4 is a witness of inquest and seizure. P.W.15 has identified his signature on delivery of possession report. He has also identified signature of Rajendra Singh. P.W.16 has identified the signature of Sri Baijnath Prasad, Advocate on chalan (ext.10), P.W.17 was a constable of the Sessions Court and he has identified the seal of the packet which was brought from Malkhana. P.W.18 has identified the signature of P.W.9 Bhuneshwar Chaudhary on the report of Dakhal

Dahani. PWs. 1,2,3,9,10,11 and 14 are witnesses whose names are mentioned in the fardbeyan as witnesses of the occurrence. P.W.5 is Gotani of the informant. P.W.8 is the doctor who held post mortem over the dead body of the deceased. P.W.6 and 7 were tendered by the prosecution. P.W.12 is the informant and P.W.13 is the Investigating Officer of the case.

7. On the other hand, D.W.1 has proved his typing of show cause of a proceeding under Section 144 Cr.P.C. and D.W.2 has identified the Patna High Court CR. APP (DB) No.364 of 1990 dt.29-08-2013 9 signature of Sarpanch of Binodpur Gram Panchayat Ram Balak Singh.

8. The trial court after considering the evidences on record and after hearing arguments of the learned counsel for the parties opined that the prosecution has succeeded in proving the charges against the appellants beyond the shadow of all reasonable doubts.

9. This Court is required to reappraise the evidences on record to see as to whether there was material on record to prove the charges against the appellants beyond the shadow of all reasonable doubts or not.

10. Before taking up the evidence of ocular witnesses, it would be appropriate to discuss the evidence of the doctor who held post mortem over the dead body of deceased Ram Swaroop Paswan which was conducted by Dr.B.R.Maharia, P.W.8, who was posted as Medical Officer at Begusarai on 12.04.1974. On that date at about 8.00 A.M. he conducted post mortem and found following injuries: Patna High Court CR. APP (DB) No.364 of 1990 dt.29-08-2013 10 (i) penetrating injury with incised margin measuring 3 x2x abdomen deep on the left side of abdomen on the level umbilicus, a loop of small identification was out through gap that hole. There was haematoma on the left side of abdomen. (ii) Incised wound 3x1/2 on the lateral aspect of middle of left leg. (iii) Lacerated wound 1x1/4x1/4 on the left side of the chest. (iv) Lacerated wound x1/8x1/8 on the back of right elbow. (v) Abrasion 2x on the right side of abdomen. (vi) Swelling 2x2 on the right temporal region of face. (vii) Abrasion x1/4 on the bridge of nose. (viii) Dislocated socket of the right upper pre-molar with clot. Death, according to the doctor, was on account of shock and haemorrhage following injury no.(i). Injury nos. (i) and (ii)

were caused by sharp weapon like bhala, injury nos.(iii) to (viii) have been caused by hard and blunt substance such as lathi. Rigor mortis were Patna High Court CR. APP (DB) No.364 of 1990 dt.29-08-2013 11 present in all limbs. The injuries were caused within 36 hours from the post mortem examination.

11. The doctors evidence has proved that Ram Swaroop Paswan was murdered on 11.04.1974 and cause of death was due to the injury caused by sharp weapon like bhala in the abdomen. Other injuries have not been described to be fetal but it has come that injury nos. (i) and (ii) were caused by bhala.

12. Once the death of Ram Swaroop Paswan is established, then it has to be seen as to whether the prosecution has succeeded in proving the charges against the accused persons beyond the shadow of all reasonable doubts or not.

13. First of all, the evidence of the informant is being discussed. She has been examined as P.W.12. She has stated that on the date of occurrence, the sun was to set in. 20 to 25 persons including Ram Badan Singh, Chandra Mauli Singh, Baiju Singh, Uchit Singh, Dhure Singh, Mani Singh, Kantu Singh, Satto Singh, Rajo Singh, Mallu Singh, Nawal Singh, Rameshwar Singh, Patna High Court CR. APP (DB) No.364 of 1990 dt.29-08-2013 12 Kamleshwari Singh and Ramadhar Singh came. They were in possession of Bhalas, lathis. Ram Badan Singh asked as to why crops was being harvested upon which the informants brother Ram Swaroop Paswan told that as the land was of his Bhagina, he would harvest it. Ram Badan Singh thereafter instigated Baiju Singh to assault him. Upon this, Baiju gave a bhala blow on the stomach of Ram Swaroop Paswan. When Ram Swaroop Paswan fell down, Mani Kant Singh gave a bhala blow on the arm and Ghuran Singh gave a bhala blow on the leg of Ram Swaroop Paswan. Rama Dhar Singh (not sent up for trial) also assaulted him upon temporal region of Ram Swaroop Paswan with lathi. After doing the offence, the accused persons escaped. After sometime, Ram Swaroop Paswan succumbed to his injuries. The Officer-in-Charge came at the place of occurrence and recorded her statement. The land belonged to Rajgir Paswan and he had planted the wheat. The accused persons were not at all concerned with the wheat crops. This witness has named only three persons who Patna High Court CR. APP (DB) No.364 of 1990 dt.29-08-2013 13

were having bhalas and they assaulted Ram Swaroop Paswan. Appellant Mani Kant is alleged to have given a bhala blow on the arm of the deceased Ram Swaroop Paswan but no such injury has been found. She has stated and described the occurrence wherein her brother Ram Swaroop Paswan was assaulted which led to his death.

14. P.W.1 has supported the informant but added that Kamli and Rameshwar Singh were also present. They have also participated in the offence. She has stated that all the accused were in the mob and they indiscriminately assaulted Ram Swaroop Paswan by bhalas and lathis. Her statement under Section 164 of the Code of Criminal Procedure was recorded but she has not told before the Magistrate that Ghuran Singh had assaulted on the hand and Mani Singh assaulted upon the leg of Ram Swaroop Paswan. P.W.2 has supported the manner of assault. P.W.3 has stated that a proceeding under Section 145 Cr.P.C. was litigated between both the sides. P.W.5 has supported the occurrence but has stated Patna High Court CR. APP (DB) No.364 of 1990 dt.29-08-2013 14 that Manni Singh assaulted Ram Swaroop Paswan by lathi on the leg. She has admitted the strong enmity and stated that her family members were accused in connection with a case of killing of Ram Balak Singh. She has denied the suggestion that Ram Swaroop Paswan suffering from cancer and was fed up from the life and was not killed by the accused persons and so a false case has been lodged with view to put pressure upon the accused persons. P.W.9 has supported the manner of assault. P.Ws. 10, 11 and 14 have also supported the prosecution version regarding manner of assault. All the witnesses have stated that prior to occurrence one case of murder was lodged in which the informants family members were accused and the deceased of that case was a family member of the appellants.

15. Learned counsel for the appellants has assailed the judgment and has submitted that it has come in evidence that Ram Swaroop Paswan was suffering from cancer in his penis and his penis was amputated at Begusarai Hospital and he Patna High Court CR. APP (DB) No.364 of 1990 dt.29-08-2013 15 was the liability of his family and all the family members took the officer-in-charge of Bhagwanpur Police Station in collusion and committed murder of Ram Swaroop

Paswan and falsely implicated the accused persons with a view to take revenge against them. It has also come in evidence that hardly a week ago from the murder of Ram Swaroop Paswan, murder of Ram Balak Singh was committed by Mohan Singh and his family members and the family members of Sanjho Devi, the informant of this case. In that case, accused Mani Kant Singh was the informant and most of the appellants of this case were the witnesses. It has also been submitted that the dead body of Ram Swaroop Paswan was found on a bamboo cot at a distance of 38 steps west from the place of the occurrence but no blood was found there. It has also been submitted that the blood stained earth was seized by the Investigating Officer from the place of occurrence but it was not sent for chemical examination and there is no explanation about Patna High Court CR. APP (DB) No.364 of 1990 dt.29-08-2013 16 that. Other submission is that the Investigating Officer had gone to the place of occurrence after occurrence but had not found any mark of violence at the place of occurrence which goes to show that the offence was not committed in the manner as stated above. It has further been submitted that though there was allegation that Mani Kant gave bhala blow but corresponding injury was not found.

16. On the other hand, learned APP has submitted that though there are minor contradictions in eye witness account but has described the whole manner in which the killing was made by the accused persons.

17. We have gone through the entire record and also heard learned counsel for the parties.

18. The Investigating Officer of this case has been examined as P.W.13. He has apprehended accused Baiju Singh on the date of occurrence itself. This witness has stated that the informant had come herself to the police Patna High Court CR. APP (DB) No.364 of 1990 dt.29-08-2013 17 station along with Bhagwat Paswan (P.W.10). He knew that the occurrence was on account of dispute relating to land. An effort was made by the Investigating Officer which has been noted in paragraph 43 of the case diary and in paragraph 31 of the deposition that Rajgir Paswan was searched but he was absconding due to fear of he being apprehended. It was suggested on behalf of the defence that the blood seized was

not of human and for that reason it was not sent for chemical examination. He has stated in paragraph 61 of his deposition that Kushma Devi (P.W.1) has named only 8 persons and not 14. Kushma Devi has told during investigation that Mani Kant Singh has assaulted Ram Swaroop Paswan with Lathi and Ghuro Singh assaulted by Bhala on the leg. The statement of P.W.1 during investigation was other wise. He has stated in his evidence that assault by Mani Kant Singh and Ghuran Singh was made. Mani struck upon the leg but that was not her statement during investigation meaning thereby that P.W.1 has stated two things at two Patna High Court CR. APP (DB) No.364 of 1990 dt.29-08-2013 18 places regarding role of Mani and Ghuran. Therefore, there is inconsistency in her evidence with regard to role attributed to Mani and Ghuran. Regarding participation of others, she has named only 8 persons in her statement during investigation but in court she has inflated it and named 14 persons.

19. The Investigating Officer has stated that P.W.5 Sohago Devi has not named Kamli, Rameshwar, Nawal, Ramadhar, Bhallu and Satto during investigation. She has not stated during investigation that Ghuran was armed with bhala and he has assaulted Ram Swaroop by bhala in his arm. She during investigation has named only 8 persons and not 16 persons. The evidence of P.Ws. 1 and 6 are such which can be said that they have contradicted their own version which they have given during investigation. They cannot be said to be reliable witnesses as they are not consistent with the statement as recorded during investigation and the evidence as recorded in the court. Patna High Court CR. APP (DB) No.364 of 1990 dt.29-08-201

20. P.W.3 during investigation has not named 14 persons as accused and had not claimed identification. He has not named Ram Badan Singh, Raja Singh, Ram Uchit Singh, Bhullu Singh, Nawal Singh, Satto Singh, Kamleshwari Singh, Rameshwar Singh, Ramadhar Singh during investigation. Therefore, P.W.3 is also not consistent when the role of accused persons is considered. P.W.9 has not claimed identification of 14 persons. His statement during investigation was taken and at that time he claimed identification of only 5 persons. P.W.10 Bhagwat Paswan has not claimed identification of Ram Badan Singh, Nawal Singh, Rameshwar Singh, Kamleshwari and Ram Udagar Singh during investigation. He

has not stated that Ram Badan Singh has ordered for assault and thereafter assault was made.

21. If the entire evidence is taken into consideration, then it is apparent that Ram Swaroop Paswan was killed on the date and time of occurrence i.e. in the morning on 11.04.1974 and Patna High Court CR. APP (DB) No.364 of 1990 dt.29-08-2013 20 his death was on account of injury which was received by hard and blunt substance as well as by penetrating wound. The evidence of the prosecution witnesses which has come on the record is that one bhala blow was given in the stomach/abdomen of Ram Swaroop Paswan by Baiju Singh and that was the cause of death according to doctor. The doctor has opined that injury no.1 was caused by bhala which was the cause of death. Regarding role of Mani Kant Singh and Ghuran Singh who were allegedly having bhala and given assault according to eye witnesses it can be said that the doctor has not corroborated that part of allegation. The doctor has found only two bhala injury and not three as it was the prosecution consistent version. The eye witnesses who have been examined on behalf of the prosecution have also not named all the accused persons during investigation. All the witnesses have not named all the accused persons about whom they have deposed in the court. Regarding Mani Kant Singh and Ghuran Singh, many witnesses have stated that Patna High Court CR. APP (DB) No.364 of 1990 dt.29-08-2013 21 they were not authors of injury by bhala. Some have reversed their role. The enmity is there from before because it has come in evidence that merely a week prior to the occurrence one family member of the accused persons was killed and in that case the family members of the informant were accused. Undoubtedly, Ram Swaroop Paswan has been killed but prosecution has succeeded in proving its case only to the extent that the injury caused on the stomach/abdomen of Ram Swaroop Paswan was fatal and that injury has been attributed to appellant Baiju Singh. The presence of co-villagers in their field at the time of crop harvesting in the early morning is a common phenomena. All the accused persons were not armed with any weapon which could have been used for assault rather they were having lathi. The farmers always carry lathi in their hands while moving one field to other and for safety also they used lathi in their hand. In such circumstances, it cannot be said from the evidence brought on record that the accused other Patna High Court CR. APP

(DB) No.364 of 1990 dt.29-08-2013 22 than Baijnath Singh was also responsible for causing death or other persons were having common object or intention to cause death to Ram Swaroop Paswan. The case of Baijnath Singh is completely distinguishable from the cases of other accused persons about whom different roles have been attributed by different witnesses. The only consistent evidence which has come on record is that the assault given by Baijnath Singh was fatal.

22. In that view of the matter, we are of the view that there was no material to prove the charges against appellants Ram Uchit Singh, Chandra Mauli Singh, Raja Singh alias Raju Singh, Ram Udagar Singh alias Bhulo Singh alias Raja Singh, Nawal Singh, Mani Kant Singh, Shri Kant Singh and Ghuran Singh alias Chandra Shekhar Singh beyond the shadow of all reasonable doubts. Hence, they deserve to be acquitted.

23. However, the prosecution has succeeded in proving that Baij Nath Singh alias Baidyanath Singh alias Baiju Singh was the person Patna High Court CR. APP (DB) No.364 of 1990 dt.29-08-2013 23 who caused death of Ram Swaroop Singh. So charges under Sections 302 and 148 of the Indian Penal Code are proved against appellants Baij Nath Singh alias Baidyanath Singh alias Baiju Singh beyond the shadow of all reasonable doubts. Hence, his conviction and sentence are upheld.

24. In the result, Cr.Appeal (DB) No. 380 of 1990 is allowed and Cr.Appeal (DB) No. 364 of 1990 is partly allowed. The judgment of conviction and order of sentence awarded against Ghuran Singh alias Chandra Shekhar Singh (appellant in Cr.Appeal (DB) No. 380 of 1990) and Ram Uchit Singh, Chandra Mauli Singh, Raja Singh alias Raju Singh, Ram Udagar Singh alias Bhulo Singh alias Raja Singh, Nawal Singh, Mani Kant Singh and Shri Kant Singh alias Kantu Singh (appellants in Cr.Appeal (DB) No. 364 of 1990) is set aside. They are acquitted of the charges. Since these appellants are on bail, they are discharged from the liabilities of their respective bail bonds.

25. However, Cr.Appeal (DB) No. 364 of Patna High Court CR. APP (DB) No.364 of 1990 dt.29-08-201

1990. in respect to appellant Baij Nath Singh alias Baidyanath Singh alias Baiju Singh is dismissed. As he is on bail, his bail bond is cancelled. He is directed to surrender in the court below to serve out remaining part of sentence. The court below is also directed to take coercive step to take him into custody. (Shyam Kishore Sharma, J) (Amaresh Kumar Lal, J) Patna High Court, Patna Dated, the 29th August, 2013 Tahir/-(NAFR)

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