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Kamala Singh and ors Vs. State of Bihar

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Court : Patna

Decided On : Sep-11-2013

Appellant : Kamala Singh and ors

Respondent : State of Bihar

Judgement :

Patna High Court CR. APP (SJ) No.256 o

1. IN THE HIGH COURT OF JUDICATURE AT PATNA Criminal Appeal (SJ) No.256 of 2001 ========== 1. Kamala Singh son of late Suba Singh resident of village Ukurhani P.S. Obra District Aurangabad 2. Juda Singh son of late Bhajan Singh resident of village Ukurhani P.S. Obra District Aurangabad 3. Shyama Singh @ Shyam Narayan Singh son of late Brahmadeo Singh resident of village Ukurhani P.S. Obra District Aurangabad 4. Ramashish Singh son of late Sitaram Singh resident of village Ukurhani P.S. Obra District Aurangabad .... Appellant/s Versus State Of Bihar .... Respondent/s ==========

Appearance: For the Appellant/s : Mr. Kanhaiya Prasad Singh, Sr, advocate Mr. Vijay Bardhan Pandey, Advocate For the State : Mr. Sujit Kumar Singh, A.P.P. ==========

CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA ORAL

JUDGMENT

Date:

11. 09-2013 1. The above stated appellants have challenged the judgment of conviction dated 21.7.2001 and sentence order dated 25.7.2001 passed by learned Addl. Sessions Judge I, Aurangabad in Sessions trial no. 64 of 2001/100 of 1988 (State versus Kamala Singh) by which and whereunder learned Addl. Sessions Judge I, Aurangabad found guilty the appellants for the offence punishable under section 147 of the Indian Penal Code and accordingly, they were convicted for the offence punishable under section 147 of the IPC and were sentenced to undergo rigorous imprisonment for two years under the aforesaid section and furthermore, appellants were found guilty for the offence punishable under section 307 read with section 149 of the IPC and accordingly, they were convicted under the aforesaid section Patna High Court CR. APP (SJ) No.256 o

2. and sentenced to undergo rigorous imprisonment for three years under the above stated section. Both the above stated sentences were ordered to run concurrently.

2. By the same impugned judgment, the learned trial court acquitted the appellants and other accused persons for the offences punishable under sections 302, 302 read with section 149 of the IPC and similarly, some accused persons were acquitted of all the charges.

3. In brief, the prosecution case, is that one Mangal Singh gave his fardbeyan on 15.10.1984 at about 11.30 a.m. to officer-in- charge of Obra police station in the private clinic of Dr. Biswanath Sah to this effect that he along with Janeshwar Mahto, Shyam Bihari Mahto, Bhuneshwar Mahto (P.W. 1), Jagdeo Singh (P.W.3), Lakhan Singh (P.W.

2) had gone to Jeyaripur Aahar to irrigate their fields and at about 9 a.m., they noticed that flow of water of drainage was closed and Gora Singh and Baldeo Pandey of village Ukrmi were sitting there. On being asked from them as to why they had closed flow of water, the above stated persons started abusing them and stated that unless lands of their village were irrigated, they would not allow to irrigate lands of the informant and his villagers. The above stated Gora Singh

started going towards his village giving threat to teach lesson to them and after half an hour, Ramashish Singh being armed with garasa, Shyama Singh being armed with double barrel gun, Sarjug Singh armed with double barrel gun, Chadradeo Singh armed with country made pistol, Devanand Singh armed with country made pistol, Jamuna Singh being armed with garasa, Raghunath Singh being armed with garasa, Juda Singh being armed with garasa, Jagan Patna High Court CR. APP (SJ) No.256 o

3. Singh being armed with garasa, Kamala Singh being armed with bhala, Biran Singh being armed with bhala, Janeshwar Singh, Munarik Singh being armed with garasa, Bindeshwar Singh being armed with garasa, Surajdeo Singh being armed with garasa, Brahmdeo Singh being armed with lathi and Gora Singh as well as 8 to 10 persons of village Ukrmi reached there raising alarm of Jaikar. Ramashish Singh ordered others to shoot the informant and others and after that Shyama Singh started making indiscriminate firings of his double barrel gun as a result of which Janeshwar Mahto, having sustained fire arms injury fell down there and thereafter Sarjug Singh also fired from his double barrel gun as a result of which Mangal Singh, Jagdeo Singh (P.W. 2), Lakhan Singh (P.W.

3) and Bhuneshwar Mahto (P.W.

1) sustained fire arms injury. The aforesaid Sarjug Singh continued firing. In the meantime, Shyam Bihari Mahto came to rescue of his injured brother, namely, Janeshwar Mahto and tried to pick him up but Kamala Singh gave bhala blow on his back. The alarm raised by the informant and others attracted his co-villager who came running there but they were also assaulted by the aforesaid persons by lathi and bhala as a result of which Ramkrit Mahto, (P.W. 8), Prayag Mahto (P.W. 10), Suresh Singh (P.W. 4), Rajdeo Mahto, (P.W. 11), Ramroop Mahto (P.W.

14) etc. sustained injuries. After the aforesaid occurrence, all the accused persons fled away from there and the injured persons were taken to hospital for treatment.

4. On the basis of the aforesaid fardbeyan of Mangal Singh, Obra P.S. case no.154/1984 for the offences punishable under sections 147, 148, 149, 324, 307, 430 of the Indian Penal Code and 27 of the Patna High Court CR. APP (SJ)

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4. Arms Act was registered and later on, section 302 of the IPC was also added. The formal FIR was registered against 17 named accused persons as well as 8 to 10 unknown persons.

5. The case was investigated and after completion of investigation, Investigating officer submitted charge sheet against 23 accused persons whereas one accused namely, Baldeo Pandey was not sent up for trial. Cognizance of the offence was taken and the case was committed to the court of sessions, in usual way.

6. Altogether, 20 persons including appellants were charged for the offences punishable under sections 302, 149 of the IPC whereas the appellant no.1, Kamala Singh was, separately, charged for the offence punishable under section 307 of the IPC for making murderous attempt on Shyam Bihari Mahto. Furthermore, appellant no.3, namely, Shyama Singh was, separately, charged for the offence punishable under section 302 of the IPC for causing death of Janeshwar Singh. Seven accused persons were charged for the offence punishable under section 147 of the IPC. No charge under section 147 of the IPC was framed against the appellants. Appellants denied the charges and claimed to be tried.

7. In course of trial, prosecution examined, altogether, nineteen witnesses and also got exhibited some documents. The statements of the appellants and other accused were recorded under section 313 of the Cr.P.C in which they denied the prosecution story and claimed their false implication.

8. No evidence was adduced by the appellants in support of their defence but from perusal of statements recorded under section Patna High Court CR. APP (SJ) No.256 o

5. 313 of the Cr.P.C as well as trends of cross-examination of prosecution witnesses, it appears that the defence of the appellants was total denial of the prosecution story.

9. The Addl. Sessions Judge, having perused the materials available on record, passed the impugned judgment in the manner as stated above.

10. Learned counsel appearing for the appellants assailed the impugned judgment of conviction and sentence order arguing that in course of trial, prosecution could not succeed to prove its case beyond all shadow of reasonable doubts and, as a matter of fact, in course of trial, P.Ws.1, 2, 5, 8, 9, 12 and 17 have not supported the prosecution case and so far as PWs.11 and 14 are concerned, they were tendered by the prosecution and only P.Ws. 3, 4, 6 and 10 have supported the prosecution case to some extent but from perusal of evidences of the aforesaid prosecution witnesses, it is explicit clear that prosecution party was aggressor and moreover, prosecution failed to prove as to who assaulted to whom and, as a matter of fact, there was free fight between the parties and it appears from the depositions of the aforesaid witnesses that there was contradiction in the statements of the prosecution witnesses in respect of time of occurrence because some witnesses stated that alleged occurrence took place at 9 a.m. whereas some witnesses stated that alleged occurrence took place at 4 a.m. and apart from this, there was also contradiction in the statements of the prosecution witnesses in respect of manner of occurrence. It is further contended by him that some witnesses even could not succeed to identify the appellants in course Patna High Court CR. APP (SJ) No.256 o

6. of trial and, therefore, the learned trial court committed error in relying upon the depositions of above stated prosecution witnesses and the appellants were entitled to get benefit of doubt.

11. On the other hand, learned Addl. Public Prosecutor appearing for the State supported the impugned judgment of conviction and order of sentence arguing that some witnesses have supported the prosecution story and their statements are corroborated by the injury reports as well as statement of doctor and therefore, there is no scope for this court to interfere into the impugned judgment of conviction and order of sentence.

12. Admittedly, P.W. 1, namely, Bhuneshwar Mahto, P.W.2, Lakhan Singh, P.W.5, Shatrughan Singh, P.W. 7, Sri Ram Mahto, P.W.8, Ramkrit Mahto, P.W.9,

Ramanand Mahto and P.W.12, Ram Bihari Mahto have been declared hostile by the prosecution. Although the aforesaid witnesses supported the story of occurrence but they did not disclose the name of any person.

13. P.W.11, Rajdeo Singh and P.W.14, Ramroop Singh have been tendered by the prosecution and they have stated nothing in their deposition.

14. P.W.13 is a seizure list witness. This witness stated that police had taken his signature on a paper which is exhibit 1 but nothing has been recovered in his presence. P.W.17 is witness on the seizure list but this witness has been declared hostile and stated that nothing has been recovered in his presence. Similarly, P.W.18 is also a witness on seizure. He proved seizure list as exhibit 6 and stated that blood stain ganji had been recovered from the person of accused Patna High Court CR. APP (SJ) No.256 o

7. Lakhan Singh.

15. P.W. 19 is a formal witness who proved formal FIR as exhibit 7 and P.W.16 is the Investigating officer of the case whereas P.W.15 is Dr Biswanath Prasad who examined all the injured persons on the alleged date of occurrence and proved their injury reports as exhibit 2 series.

16. According to the prosecution case, altogether, 12 persons sustained injury and one injured Janeshwar Mahto, later on, died. Out of the aforesaid 12 injured persons, Injured Bhuneshwar Mahto, Injured Ramkrit Mahto, Injured Lakhan Singh have been declared hostile whereas Injured Ramroop Mahto, Injured Rajdeo Mahto have been tendered by the prosecution and they have stated nothing in their depositions. Only Injured Suresh Singh (P.W. 4), Injured Jagdeo Singh (P.W. 3), Injured Prayag Mahto (P.W.10) have supported the prosecution case whereas injured Shyam Bihari Mahto, injured Mangal Singh (informant) were not examined by the prosecution in course of trial and according to the prosecution case, Janeshwar Mahto died before commencement of trial. One injured namely, Sri Ram Mahto (P.W. 7), although examined in course of trial but he did not claim to have identified any person and the above stated witness has been declared hostile by the prosecution.

17. Now, it is clear that only four prosecution witnesses are material witnesses who have supported the prosecution case. Out of the aforesaid four witnesses, P.W.3, Jagdeo Singh stated that about 3.30 a.m. to 4 a.m. he along with 5 to 6 persons were present near Shankarpur Ahara where hot exchange of words took place and after Patna High Court CR. APP (SJ) No.256 o

8. that several persons of his village came there and similarly, several persons of Ukrmi village also came there. This witness further stated that he saw Raja Nut and Baldeo Pandey carrying guns in their hands whereas Mundrika Singh was carrying pistol in his hand and other persons of Ukrmi village were carrying lathi, bhala and garasa. This witness admitted that his co-villagers were also carrying lathi, khanti etc. This witness, specifically, stated at para 3 of his examination-in-chief that Ramashish Singh (appellant no.2), Deonandan Singh, Chandrama Singh, Ramanand Singh, Shyama Singh (appellant no.3), Juda Singh (appellant no.4) were also there but he could not say as to what weapons were carrying by the aforesaid persons. This witness further stated that all of a sudden, firing was started as a result of which, he sustained fire arm injury but this witness has, nowhere, stated as to who had fired at him. This witness admitted in his cross-examination that there was dispute between villages of Ukrmi and Deokuli on the point of irrigation from before. He further admitted that villagers of village Deokuli were aware of this fact that a dispute might take place and they had gone there with full preparation. He further admitted at para 9 of his cross-examination that there was dispute between the above stated villages on the point of irrigation since long and the informant Mangal Singh was leading village Deokuli. This witness further admitted at para 10 of his cross- examination that when hot exchange of words was going on, more than 100 persons of his village came on the place of occurrence and they tried to cut the ridge and two to three persons including Janeshwar Mahto (deceased) were cutting the ridge and after that Patna High Court CR. APP (SJ) No.256 o

9. villagers of Shankarpur and Jiyaripur started making firings. This witness further admitted at para 12 of his cross-examination that had appellant no.4, Ramashish Singh been present on the place of occurrence from before, the occurrence would not have taken place and the appellant no. 4 tried to pacify the dispute. He also

admitted that while Janeshwar Mahto (deceased) was cutting field, he sustained fire arm injury. He further stated that on the direction of Mangal Singh, case was registered.

18. P.W. 4, Suresh Singh is said to be another witness and injured of this case. This witness stated that the occurrence took place between 3.30 to 4 a.m. This witness claimed to have identified the appellants Ramashish Singh, Juda Singh, Kamala Singh and accused Ram Narain Singh and Baldeo Pandey and this witness admitted at para 2 of his examination-in-chief that Baldeo Pandey was armed with gun whereas rest above stated persons were unarmed. This witness has, nowhere, stated the name of the appellant no.3. This witness failed to identify the appellants in course of trial. This witness admitted that several persons of his village had gone for irrigation and before leaving village for irrigation, they had attended a meeting which was conveyed by Mangal Singh, informant and it was decided in the said meeting that they would irrigate their lands at any cost and furthermore, it was decided that they would go for irrigation with full preparation and either they would die or kill others for irrigation. He further stated that when he reached at the place of occurrence, there was crowd of more than 600 people and several persons of nearby villages had assembled there. This witness further stated that Patna High Court CR. APP (SJ) No.256 o

10. Janeshwar Mahto sustained fire arms injury but he could not say as to who fired on him. This witness, too, admitted that his co-villagers including Janeshwar Mahto, were armed with lathi, khanti and rod etc. This witness stated that Baldeo Pandey was making firing.

19. P.W. 6, Awdhesh Singh stated that between 3.30 to 4 a.m., he was at his house and having heard noise, he came running at Shankrapur Ahara where he saw appellant Shyama Singh, accused Sarjug Singh having armed with double barrel gun, Kamala Singh, Suraj Singh, Mundrika Singh, Gora Singh, Ramrekha Singh, Ramchandra Singh, Raghunath Singh and several others were armed with lathi, bhala, garasa and this witness, specifically, stated that Kamala Singh was carrying bhala in his hand and gave bhala blow to Shyam Bihari Mahto whereas appellant Shyama Singh fired hitting Janeshwar Mahto, Jagdeo Singh whereas

Sarjug Singh fired hitting Prayag Mahto, Bhuneshwar Mahto, Lakhan Mahto, Ramroop Mahto. This witness failed to identify the appellant Shyama Singh and some other appellants. This witness at para 7 of his cross-examination stated that when he reached at the place of occurrence, there was crowd of 300 to 400 people and people of his village were more in number. This witness also admitted that prior to alleged occurrence, meeting was held in his village on the call of informant Mangal Singh and this witness also admitted that his villager were armed with khanti, lathi, bhala. This witness also admitted that injured persons had not disclosed the name of any assailant before him.

20. P.W. 10, Prayag Mahto, who happens to be another injured of this case, stated that he along with his villagers had gone to Patna High Court CR. APP (SJ) No.256 o

11. Shankarpur Ahra for irrigation and found that Nala was closed and after that he as well as his associates opened the flow of nala but in the meantime, villagers of Ukrmi village came there and they started closing flow of NALA again upon which he along with his associates made protest. This witness, specifically, stated that Shyama Singh, Deonandan Singh, Sarjug Singh, Ramashish Singh and Kamala Singh of Ukrmi village came there and at that time Shyama Singh was armed with double barrel gun, Deonanandan Singh armed with pistol, Sarjug Singh armed with garasa, Kamala Singh was armed with bhala whereas Ramashish Singh was unarmed. This witness stated that he as well as his associates made protest, Shyama Singh opened fire of his gun as a result of which he sustained pellet injury on his right hand and similarly, Janeshwar Mahto, Ramkrit Mahto, Jagdeo Mahto, as well as 8 to 9 persons received pellet injury. He further stated that Kamala Singh gave bhala blow to Shyam Bihari Mahto. This witness stated that after the occurrence, treatment of the injured persons was done. This witness stated at para 6 that he had made statement before police that Shyama Singh had made firing causing pellet injury on his leg. This witness also stated that he had taken name of Ramashish Singh before police but P.W 1.Investigating officer of this case stated at para 22 of his cross-examination that this witness had not taken the name of Ramashish Singh.

21. P.W. 16 also admitted this fact that P.W.10 had stated before him that he had gone on the place of occurrence having heard noise and sound of firing and this witness had not stated before him that when he came on the Aahar, he noticed that NALA was closed. Patna High Court CR. APP (SJ) No.256 o

12. P.W 1.further stated at para 12 of his cross-examination that when he as well as his associates opened flow of NALA villagers of Ukrmi village came there and this witness as well as his associates started returning to their village but when villagers of Ukrmi came there, they again returned and reached at NALA. This witness also admitted that he as well as his associates were also armed with lathi and khanti. This witness also admitted that he could no say as to whose firing hit to whom.

22. On perusal of the above stated evidences, it is apparent that the occurrence took place on account of dispute of irrigation and the prosecution party had gone on the place of occurrence with full preparation to fight with the villagers of Ukrmi and other villagers and furthermore, it is also apparent from the above stated evidences that occurrence started when the prosecution party opened NALA and therefore, it appears that prosecution party was aggressor.

23. Furthermore, it is evident from the above stated evidences that the material witnesses have made contradictory statements on the point of holding weapons by the appellants and other accused.

24. P.W.4, Suresh Singh, who happens to be one of the injured persons of this case, stated that only Baldeo Pandey was carrying gun in his hand whereas rest persons were unarmed and this witness has not stated name of the appellant Shyama Singh and furthermore, this witness stated that it was Baldeo Pandey who fired of his gun hitting injured persons of this case.

25. Similarly, P.W. 3, Jagdeo Singh, another injured stated Patna High Court CR. APP (SJ) No.256 o

13. that Raja Nut and Baldeo Pandey were carrying guns in their hands whereas Mundrika Singh was carrying pistol in his hand and so far as rest villagers of Ukrmi

village are concerned, they were carrying lathi, bhala and garasa etc. This witness could not say as to which weapons were carrying by the appellants. This witness further admitted that all of a sudden firing started and he has not stated who made firing.

26. On contrary, P.W.6 stated that having heard noise, he came on the place of occurrence and noticed that Shyama Singh and Sarjug Singh were carrying guns in their hands whereas Kamala Singh, Jainandan Singh, Munarik Singh Gora Singh Ramrekha Singh were carrying lathi, bhala, garasa etc. This witness also stated that Shyama Singh, Sarjug Singh made firing causing injury to Janeshwar Mahto and Jagdeo Singh respectively and apart from the aforesaid two persons other persons also sustained fire arms injury. This witness failed to identify the appellants Shyama Singh and others in course of trial and made wrong identification. This witness appears not to be an eye-witness because he himself admitted that he came on the place of occurrence having heard noise. Moreover, there is major contradiction in the statement of this witness as well as in the statements of P.Ws 3 and 4. So far as P.W 1.is concerned, this witness stated that appellant Shyama Singh was armed with double barrel gun whereas Deonandan Singh was armed with pistol and Sarjug Singh was armed with garasa and Kamala Singh was armed with bhala and this witness stated that appellant Ramashish Singh was unarmed. This witness claimed that appellant Shyama Singh fired hitting on his leg as well as hitting Janeshwar Mahto, Rajdeo Singh, Jagdeo Singh. This witness has not Patna High Court CR. APP (SJ) No.256 o

14. stated in his deposition that Sarjug Singh had also made firing hitting injured Jagdeo Singh. Therefore, it is evident that the material witnesses have made contradictory statements on the point of firing and they have contradicted to each others on the point as to from whose firing the deceased Janeshwar Mahto sustained fire arms injury. It is also established from the evidence available on the record that there was crowd of more than 600 people of different villages and altercation took place between prosecution party and the villagers of other villages and both parties chased to each other and in that course, firing was made. Therefore, it is not possible to say who made firing causing injury to whom.

27. Informant Mangal Singh, the informant of this case, has not been examined by the prosecution and similarly, injured Shyam Bihari Mahto has also not been examined. Although some prosecution witnesses stated that it was Kamala Singh who gave bhala blow to injured Shyam Bihari Mahto but other prosecution witnesses contradicted the above stated statement. Moreover, non-examination of injured Shyam Bihari Mahto is fatal to the prosecution case, particularly, on the point of giving bhala blow to injured Shyam Bihari Mahto. The prosecution has not brought any explanation of non- examination of injured Shyam Bihari Mahto. Therefore, in my view, prosecution could not succeed to prove charge for the offence punishable under section 307 of the IPC against the appellant Kamala Singh beyond all shadow of reasonable doubts. Similarly, I am also of the opinion that when the prosecution could not succeed to prove charge under section 307 of the IPC against the appellant Kamala Patna High Court CR. APP (SJ) No.256 o

15. Singh, other appellants could not have been convicted for the offence punishable under section 307 read with section 149 of the IPC.

28. I also find that no separate charge for the offence punishable under section 307 read with section 149 of the IPC was framed against the appellants and similarly, no charge, against the appellants has been framed for causing injury to injured persons except for causing injury to deceased Janeshwar Mahto and Shyam Bihari Mahto and apart from this, no question was put to the appellants under section 313 of the Cr.P.C in respect of causing injury to injured persons of this case except injured Shyam Bihari Mahto and the deceased Janeshwar Mahto and, therefore, in absence of specific charge regarding causing injury to injured persons of this case except the deceased Janeshwar Mahto and injured Shyam Bihari Mahto and in absence of the specific question regarding the above stated fact in the statement of section 313 of the Cr.P.C, appellants could not have been convicted for causing injury to injured persons except injured Shyam Bihari Mahto and the deceased Janeshwar Mahto.

29. So far as causing injury to injured Shyam Bihari Mahto is concerned, it is apparent that prosecution witnesses have made contradictory statements in respect of the aforesaid fact and injured Shyam Bihari Mahto has not been

examined by the prosecution. Similarly, so far as causing injury to the deceased Janeshwar Mahto, is concerned, prosecution witnesses made contradictory statements and post mortem report of the deceased Janeshwar Mahto has also not been brought on record. Therefore, in my view, the learned trial court committed error in convicting the appellants for the offence Patna High Court CR. APP (SJ) No.256 o

16. punishable under section 307 read with section 149 of the IPC. Accordingly, the conviction and sentence of the appellants for the above stated offence is, hereby, set aside.

30. So far as conviction of the appellants under section 147 of the IPC is concerned, almost, all material prosecution witnesses stated that the appellants formed unlawful assembly and, therefore, in my view, the learned trial court rightly convicted the appellants for the offence punishable under section 147 of the IPC.

31. So far as, point of sentence is concerned, appellants have been convicted under section 147 of the IPC to undergo rigorous imprisonment for two years. Admittedly, the impugned judgment was pronounced on 21.7.2001 and at the time of prouncement of judgment, appellant- Kamala Singh was aged about 70 years, appellant- Ramashsis Singh was aged about 62 years, appellant- Shyama Singh was aged about 60 years, appellant- Juda Singh was aged about 80 years and all the appellants remained in custody in course of investigation as well as in course of trial for considerable period.

32. In the aforesaid circumstance, in my view, for the ends of justice, period already undergone by the appellants in course of investigation or trial shall meet the ends of justice instead of sending them behind the bar to serve out their sentence and accordingly, sentence imposed upon the appellants under section 147 of the IPC is reduced to the period already undergone by the appellants in course of investigation or trial.

33. On the basis of the aforesaid discussions, this criminal appeal is, partly, allowed and accordingly, judgment of conviction and Patna High Court CR. APP (SJ) No.256 o

17. order of sentence is modified in the manner as stated above. All the appellants are on bail, they are discharged from liabilities of their bail bonds. Shahid/NAFR (Hemant Kumar Srivastava,J)

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