

State of Bihar Vs. Krishna Singh

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Court : Patna

Decided On : Feb-15-2002

Judge : Narayan Roy and Prabhat Kumar Sinha, JJ.

Appeal No. : Death Reference No. 1 of 2001 with Criminal Appeal Nos. 61 and 139 of 2001

Appellant : State of Biharsidhi Yadav and Ten Others with Krishan Singh and ors.

Respondent : Krishna Singhstate of Bihar

Judgement :

Prabhat Kumar Sinha, J.

1. Death Reference No. 1 of 2001 arises out of judgment recorded in Sessions Trial No. 211 of 1998/8 of 2000 by the Second Additional Sessions Judge, Aurangabad, in which the condemned prisoner along with twelve other accused was tried, and he was convicted under Section 302 of the Indian Penal Code (hereinafter referred to as the 'Penal Code') and under Section 17 of the Criminal Law Amendment Act and was sentenced to be hanged till death for offence under Section 302 of the Penal Code, as well to undergo simple imprisonment for six months under Section 17 of the Criminal Law Amendment Act.

2. This Krishna Singh and other convict Suresh Singh had filed Criminal Appeal No. 139 of 2001 separately and rest of the accused filed another appeal (Criminal

Appeal No. 61 of 2001), which all have been heard together and this judgment will govern the Death Reference as well the aforesaid two appeals.

3. The appellants, excluding Krishna Singh, were convicted under Section 302 read with Section 149 of the Penal Code and sentenced to undergo life imprisonment and were also convicted under Section 17 of the Criminal Law Amendment Act, 1908 and sentence to undergo simple imprisonment for six months. Appellant Suresh Singh was further convicted under Section 27 of the Arms Act and was awarded three years of rigorous imprisonment. All the sentences in respect to all the appellants were ordered to run concurrently.

4. The allegations as made out in the fardbayan of Govind Singh (Exhibit 3) recorded on 6.8.1997 at 9.45 p.m. at the place of occurrence itself, were that about twelve to thirteen days ago informant had received a letter from appellant Brahamdeo Paswan, a member of M.C.C. Committee, imposing ban upon him from cultivating his field but no action was taken as the informant side had no enmity with the aforesaid extremist organisation. Again on 5.8.1997 at about 9.30 p.m. four of the appellants, named therein, had come to the house of the informant and asked him to come to the orchard to have a talk with the party members which, however, was avoided by the informant. On 6.8.1997 while the informant with his brother Madan Singh was returning on the same bicycle after having made some purchases at Aurangabad, and reached near Rampur bridge at 5.00 p.m. the informant got down and started talking to a labourer but Madan Singh moved ahead slowly on bicycle. As soon Madan Singh reached the eastern portion of the bridge upon river Adari, the appellants, who have been named, and who were sitting in ambush, stood up and surrounded Madan Singh and caught hold of him. Appellant Suresh Singh fired from his revolver and appellant Krishna Singh started cutting the neck of Madan Singh with a 'Pasuli', an instrument used for tapping toddy, catching hold of the hair of deceased. The informant seeing that, ran away and reached Karma village, shouting, where he told the people about the occurrence and came back to the place of occurrence with the people of that village only to find his deceased brother lying in a pool of blood at the bridge, with the bicycle lying besides him and the appellants having fled away. The informant claimed that persons working in the nearby field had also witnessed the

occurrence.

5. Giving out the motive behind the occurrence it was claimed that his relative Shanker Dayal Singh of Karma village, a Mukhiya, was on inimical terms with the M.C.C. party members and his 'katchery' in village Unthoo, some days back, was demolished by the party members for which two co-villagers of the informant were sent to jail custody for which the party members blamed that the informant side had given out their names to the Police.

6. After investigation, charge-sheet was submitted and, ultimately, the trial ensued after which in the judgment the appellants were convicted, as above.

7. The defence of the appellants in course of trial, was complete denial of their complicity in any such occurrence.

8. In course of arguments Sri Tara Kant Jha, the learned Counsel for the appellants, argued that the materials on record and the attending circumstances would tend to show that none of the two eye-witnesses, the informant, who is P.W. 2, nor his father Ramraj Singh, who is witness No. 4, had seen the occurrence but finding the dead-body of Madan Singh they fabricated the story to implicate the appellants. Sri Jha also argued that the letter that was said to have been served upon them by the M.C.C. some days back which the informant in his evidence had claimed to be in the hand of Krishna Singh was a fabricated one created for the purpose of this case and in any case, it was not proved by evidence that the letter (Exhibit-4) was written by Krishna Singh. It was argued that none of the appellants could be said to be having such grudge against Madan Singh so as to kill him nor it was proved by cogent evidence that the appellants were members of a banned organisation, M.C.C. On the other hand, Sri Lala Kaliash Bihari, learned Additional Public Prosecutor submitted, referring to the infirmities in the prosecution case as pointed out by Sri Tara Kant Jha, that P.Ws. 2 and 4 were natural witnesses and that in the cross-examination their evidence could not be impeached hence if their evidence on the point of occurrence is found to be reliable, certain other attending situations, as pointed out by the other side, would in no way diminish the credibility of their evidence. The learned Additional Public Prosecutor submitted that Krishna Singh was rightly sentenced to death keeping in view the brutality with which he

had committed the murder, whereas Sri Jha argued that in any view of the matter this case could not be said to be one of those rarest of rare cases in which the punishment of death was warranted.

9. Before adverting to the submissions of the learned Counsel, the evidence on record with 'Pasuli'. When Madan Singh cried, Brahamdeo Paswan pushed 'Gamcha' (thin towel) in his mouth. This witness said that Ramchandra assaulted Madan Singh with 'Pasuli' near his right eye and Munkul started assaulting him with 'Pasuli' at his right wrist and finger. This witness also said that at that time near the bridge Ramraj Singh, father of informant, Narendra Singh and Raj Kumar Singh, brother-in-laws of the informant, were working. This witness thereafter, fled away towards village Karma and told the people about the incident there and returned back with the people of Karma out of whom he knew only Birendra Singh. He proved the bicycle in the Court on which he claimed he and Madan Singh were coming back (Material Exhibit-I) as also sandals claiming that those belonged to Madan Singh (Material Exhibit-II). His further statement was also taken at the spot.

11. This witness has given the reason of assault as claimed in the First Information Report and also said about receipt of the letter (Exhibit-4) twelve to thirteen days back. He also said that a day back in the night four of the appellants had come and called Madan Singh to meet M.C.C. people but Madan Singh did not go.

12. P.W. 3 is Birendra Singh of Karma village, who said that the informant had come running when he was sitting at his flour mill and told, babbling names of the accused, that his brother was murdered by Krishna Singh. He said as to how they reached at the place of occurrence where he saw the dead-body besides the dead-body he also saw the bicycle and saddles and potatoes fallen there. It may be mentioned that it has come in the evidence that the two brothers had gone to Aurangabad to purchase potatoes and Gur (jaggery) and were returning with those articles. P.W. 2 has said that the potatoes were in a bag whereas the jaggery was tied with the carrier of the bicycle.

13. P.W. 4 is the other eye-witness, father of the informant, Ramraj Singh. He has said that on the date of occurrence at about 5.00 p.m. he was in his field with his relatives Narendra Singh and Rajkumar Singh, since in that field the sowing was to

take place next day. He said that he heard a firing sound from the bridge side and thereafter, he heard the cries of Madan Singh and the informant 'Bachao, Bachao'. At that he had the other two with him ran towards the bridge and came up the find of the canal. He has claimed to have seen the occurrence from the time the three of the appellants had dashed the deceased to the ground and he has given exactly the same details about different roles played by different appellants as given in the evidence of P.W. 2. He also said that when the throat was cut Brahamdeo Paswan had thrust the towel in the mouth of the deceased. He also said as to how Ramchandra Das and Mandul Paswan also had assaulted. Thereafter, this witness said that when they raised 'hulla', Suresh Singh ran with his revolver saying that they should also be killed at which they fled away to their village Maula Nagar where they told about the incident to co-villagers and then this witness came back with co-villagers to the place of occurrence to find that the appellants had fled away. He also said that at the place of occurrence, he found besides the bicycle and sandles, potatoes and jaggery. He also told about the genesis of the occurrence as well receiving of a letter from M.C.C. twelve to thirteen days back and about coming of four of the appellants a day earlier calling Madan Singh to the orchard which Madan Singh refused to comply.

14. P.W. 5 is Narendra Kumar Singh, son-in-law of P.W. 4, who was also said to be at the field of Ramraj Singh at the time of occurrence. He also said that another son-in-law of Ramraj Singh was also there. He supported that he heard sound of a fire and cry of the informant and the deceased at which his father-in-law and his Sarhu, Rajkumar Singh, went running to the place of occurrence but he himself, out of fear of the criminals, ran back towards village Maula Nagar.

15. It may be noted here that in his evidence P.W. 4 had claimed that he and his two son-in-laws including Narendra Kumar had gone to the place of occurrence, had seen the occurrence and on being threatened by Suresh Singh had ran back to their village.

16. This witness further said that after fifteen to twenty minutes his father-in-law came to the village telling that Madan Singh had been murdered and, thereafter, he, P.W. 4, and some others went to the place of occurrence to find Madan Singh

dead, having injuries on his person. Besides, finding the bicycle and the sandals at the spot this witness also claimed that he found potatoes and jaggery scattered at the place of occurrence. He claimed that a day before the occurrence he had come to his in-laws place on receiving information that a letter was sent by extremist to his relatives.

17. P.W. 6 is Dr. Dharendra Narain, Civil Assistant Surgeon, who had conducted autopsy on the dead-body of the deceased on 7.8.1997 and had recorded following injuries:

(1) Incised wound over right side of forehead from above right eye-brow posteriorly above the right ear 4' x 1' bone deep, tapering posterior;

(2) Incised wound 8' x 2' x 2' in front of the neck above thyroid cartilage, wound deeper in the middle, tapering to both sides of neck;

(3) Incised wound at the base of right index finger 2' x 1/4' bone deep, tapering medially.

In the opinion of the doctor the death was caused due to haemorrhage and shock as a result of the above injuries caused by sharp weapon such as 'Pasuli' and the time elapsed since death was twelve to twenty four hours. The postmortem report is Exhibit-5.

18. P.W. 7 is the Investigating Police Officer, Mahfooz Alam, who said that at that time he was posted as officer-in-charge of Jamhor Police Station and on the date of occurrence at about 9.45 p.m., he received information that one unknown person had been murdered at the bridge over Adari river lying in between villages Rampur and Maula Nagar, by the extremist. He lodged Sanha in that regard (No. 100 of 1997) (Exhibit-11). As per Exhibit-11 this officer had heard rumours that at the bridge one unknown person had been murdered where after he proceeded to investigate about the truth of the rumor. This witness also proved formal part of first information report, Exhibit-6, as well the inquest report, Exhibit-7. The inspection by this witness supports the place of occurrence, as contended in the first information report and in the evidence of P.Ws. 2 and 4. At the place of

occurrence this witness also found copious amount of blood, the sample of which he scrapped and seized. He also found the bicycle on which the deceased was said to be going to his house as well one pair of plastic sandals which also was identified as that of the deceased. He seized all those articles and prepared seizure list, Exhibit-8, and also identified the bicycle and the sandals in the Court. However, he also said that of the sample of blood was destroyed in the Malkhana due to rains. This witness found the distance in between place of occurrence and where the informant was standing while witnessing the occurrence, to be thirty to thirty-five yards.

19. As per this witness on 7.8.1997 in the night itself he had gone to the house of the informant where he recorded the statement of Ramraj Singh as also of Narendra Singh and Raj Kumar Singh. Exhibit-4 was produced before him there for which he prepared production list, Exhibit-10. At the spot he received information that the accused used to reside in that half constructed temple, south of the village from whereat the night itself he arrested Appellants Sidhi Yadav, Krishna Singh and Suresh Singh who claimed to be innocent before him.

20. During cross-examination he admitted that he had arrested those three at village Maula Nagar itself but did not recover any fire-arm or any extremist literature from them. He also said that he had verified the antecedent of Krishna Singh and Suresh Singh but did not get any record showing that they were attached to any Naxalite organisation.

21. P.W. 8 is a formal witness who has proved the aforesaid Sanha entry as well Exhibit-2, a report from a Police Officer of Aurangabad Muffasil Police Station. P.W. 9 is also a formal witness who has proved formal portion of the First Information Report (Exhibit-14) and signatures on the fardbayan and on the formal First Information Report (Exhibits 15 and 16). This is all the evidence produced on behalf of the prosecution, whereas Shambhu Nath Ray, Junior Engineer in the Irrigation Department was examined as the sole defence witness. This witness has given the situation of the two bridges near the place of occurrence. It may be mentioned that it has come in the evidence of witnesses that there is one bridge over the canal near which the informant had got down from his bicycle in order to

talk with a labourer and at some distance, there was another bridge, the place of occurrence known as Adari-bridge. This witness said that to cross Adari-river there was bridge constructed over it and to the west of Adari river there was another bridge known as 'Rampur bridge' and that the distance between the two bridges was 846' 4'. The length of the bridge over Adari river, east to west, was 451' and the breadth of Rampur bridge, east to west, was 13'. He has prepared sketch map showing the distance, and the situation of two bridges which has been marked as Exhibit-B. This witness clarified that Adari river did not flow below the Rampur bridge rather it was over a canal. At that spot the river flew from west to east and towards east that river flowed under the Adari bridge. This Adari bridge was within the jurisdiction of the witness. Exhibit-A is the village map of Maula-Nagar which, however, has not been referred to by any side in course of the arguments.

22. Sri Tara Kant Jha had seriously contended that P.W. 4, Ramraj Singh, could not have been witness of the occurrence for which he placed a variety of arguments. There are only two eye-witnesses in the case hence both the evidence have significance. I will first examine the submission of the learned Counsel about reliability of the evidence of Ramraj Singh.

23. It has come in the evidence of P.W. 2 that when he reached the bridge he saw his brother surrounded by the appellants where after the entire occurrence took place as described by him in the evidence earlier, and the entire episode finished within three minutes. P.W. 4 has said that at the time of occurrence he was working in his field at which time he heard sound of fire and the cry of both his sons and, thereafter, he ran towards the place of occurrence and when he reached near the bridge he and his two sons-in-law came upon the scene and, thereafter, he saw the entire occurrence. As per his evidence he had seen the entire occurrence from the very beginning, till the commission of murder. However, this witness has also admitted that the field in which he was working was not shown to the Investigating Police Officer who could have measured distance between the field and place of occurrence. But, in cross-examination he said that the field was at the west-north corner of his village. He also stated in cross-examination that when, for the first time, he saw the occurrence, he saw that his deceased son was surrounded by the appellants. This witness also said that his

field was south to the canal but on hulla he did not go to the canal but came running, below the canal, near the place of occurrence and this way he had run for about one hundred feet, after which they came upon the canal, and it was when he came upon the plod of the canal that he saw his sons. He admitted that he had not seen his son from his field. Significantly he also said (paragraph 45) that at the place of occurrence he only had seen the appellants and the deceased son but apart from them he did not see any one else though P.W. 2 has claimed that he also was on the bridge and Investigating Office had said that he was only thirty to thirty-five yards away from the place of occurrence. It was argued that it was but natural for this witness to see also the informant since he has claimed that he also had heard his cry.

24. When there is definite statement that the entire occurrence had finished within three minutes and P.W. 2 has said that while the murder was being committed, Madan Singh was making noises at which time Brahamdeo has shut his mouth with towel, and when P.W. 4 has admitted that he had rushed to the place of occurrence after hearing the cry of his sons and had ran for about one hundred feet before coming upon the pind, he could hardly have seen the occurrence from the beginning, as claimed by him.

25. P.W. 4 has claimed in his statement that on hearing the cry of his sons he and his two relatives including P.W. 5 had rushed to the place of occurrence and had seen the entire occurrence. He also claimed that when Naresh Singh chased him all the three had fled away. But, his son-in-law Narendra Kumar Singh (P.W. 5) did not support that and said that he had, on hearing the cry, out of fear, fled away towards village Maula Nagar, not claiming that he saw any part of the occurrence.

26. In paragraph 2, P.W. 4 has said that on witnessing the occurrence they also had raised hulla. Obviously, at that time informant, as claimed by him, was also present at the bridge. It was argued that, thus, there was no question that he could not have seen his father and two brother-in-laws or one brother-in-law who had also come upon pind but in the first information report this witness has not claimed that he had seen his father and other relatives at the place of occurrence, he only said that the incident was witnessed by people working in the fields near his village

who would tell about the occurrence, if asked. This occurrence is said to have taken place about 5.00 p.m. whereas the fardbayan of there informant was recorded on 9-45 p.m., therefore, he had enough time at his hand to recall at least important points of the occurrence in which the witnessing of the occurrence by his own relatives could hardly have been missed by him.

27. Coming to the conduct of P.W. 4, he has claimed the just after occurrence he had ran back to his village Maula Nagar and had told the villagers about the occurrence whereafter, they all came back. This witness said that before he could reach his village, he had met ten persons of the village but he did not tell any of those the names of the assailants. He further said (paragraph 32) that in the night except the Police Officer he had not told any one the names of the accused. This witness has admitted that he had returned back to the place of occurrence where a large number of people had assembled where he had stayed for quite some time, still he has admitted that he did not tell the names of the assailants to any one.

28. Obviously, even after more than four hours of the occurrence neither the informant nor his father and other relatives, nor his well wishers or onlookers had informed the Police about the occurrence. P.W. 2 specifically admitted that he had given no information to the Police, Chaukidar, Mukhiya or the Sarpanch and he did not know as to who had informed the Police, He also said (paragraph 77) that when Police came then every one was present there including his father and brother-in-law.

29. P.W. 2 has said (paragraph 73) that when he came back to the place of occurrence the people known to him had asked about the occurrence. He has named Balram Singh, Krishna Singh, Narendra Singh and his father who had so asked about the occurrence, and has claimed that he had told the names of the accused to them. In so far as the aforesaid is concerned, there was no occasion for his father to ask about the incident if he himself had seen the entire occurrence, as claimed by him.

30. P.W. 4 has admitted (paragraph 43) that he had his shop at Aurangabad and also admitted that on the date of occurrence he was at his shop. Sri Jha argued

that this has not been explained as to how from his shop he came to his village and again went to his field to work there in course of the day. It has also been argued that though this witness has claimed that he had heard hulla of both his sons, including informant 'Bachhao, Bachho' in which he was also supported by P.W. 5, yet P.W. 2 has said (paragraph 31) that at the time his brother was thrown down and his neck was cut, he had not raised any hulla.

31. All the aforesaid points considered together make the claim of P.W. 4 that he had seen entire occurrence, doubtful.

32. Now coming to the evidence of the informant, P.W. 2, he has said that within fifteen to twenty minutes he had reached Karma village (paragraph 33) and he had met about twenty to twenty five persons of that village to whom he had disclosed that extremists had killed his brother. But this witness admitted here that he did not tell them the names of those extremists. This witness further admitted (paragraph 38) that till the Police reached there he had stayed at the place of occurrence. Police reached there at about 10.00 p.m., till when the people from Karma and his own village had stayed there. But, here also this witness admitted that in course of those four hours, he had stayed there silently without telling any one present there about the incident. This witness said (paragraph 71) that the people who had assembled at the 'chowk' (of village Karma) continued asking him about the incident and they accompanied him upto the place of occurrence during which period also they continued to ask him about the incident but he did not tell the name of any accused to them.

33. Though, as seen, subsequently he also has claimed that at the place of occurrence people had asked him and he had told them about incident as also the names of the accused, but his statements at many places in his evidence that he did not tell any one about the details of the incident or the names of the accused appears to be correct, P.W. 3 is Birendra Singh of Karma village, at whose 'Darwaza' (flour mill) the informant had rushed after witnessing the incident. This witness in the beginning had said that Govind Singh was babbling the names, but he also told that informant had told that his brother had been killed by Krishna Singh. This witness did not say that informant had told him other names also,

rather he said (paragraph 11) that he had stayed at the place of occurrence for two to three hours but in this presence nobody had informed about the incident. Even P.W. 5, brother-in-law of the informant, did not tell that either the informant or his father had told them about the names of any of the accused.

34. It has already been seen that P.W. 4 also did not tell anyone the names of the accused. Another brother-in-law of the informant is said to have seen the occurrence but he has not been produced as witness. Thereafter, it can be concluded that though the informant, his father, and his brother-in-law are claimed to have seen the occurrence which took place at about 5.00 p.m., still till the Police Officer reached there and recorded the fardbayan of the informant at 9.45 p.m., that is, after four hours and forty five minutes, none of the eye-witnesses told any one about details of the incident or about the names of any of the appellants though the informant had met a number of persons of the Karma village and his father-in-law had similarly met persons of his own village and when they came back to the place of occurrence, a large crowd had assembled there. It has also come in evidence that till the police Officer reached there, none of these close relatives of the deceased nor his well wishers, acquaintance or any of the onlookers had cared to inform the police or even Dafadar or any other authority about the incident which is not natural in view of the claim of the close relatives that they had seen the occurrence themselves. Police came there, as per sanha-entry, on hearing rumours.

35. The informant has explained his presence at the place of occurrence by claiming that he and his brother had gone to Aurangabad to fetch jaggery and potatoes. P.W. 2 has explained that since from the next day the cultivation work was to commence, that was to be celebrated with food items prepared from jaggery, and potatoes were also to be used for that purpose. As per evidence of P.W. 2 the potatoes were in a bag and jaggery was in a bundle tied to the carrier of the bicycle.

36. Sri Tara Kant Jha questioned the necessity of two brothers to fetch just these two items when their father was having a shop at Aurangabad and had admitted that he was at his shop on that day, as the father could well have brought the

articles, or why two brothers had to go for that when those articles could have been brought by one of them.

37. P.W. 2 has said (in paragraph 45) that when the bicycle fell down, the potatoes, kept in the bag and hung with the handle, had also scattered and potatoes were also smeared with blood, but the jaggery remained tied with the carrier. P.W. 3 also claimed that he had seen the potatoes scattered near the dead-body. P.W. 4 also had said about scattering of the potatoes and the jaggery and said that he had not lifted those. Likewise, P.W. 5 said that when he came to the place of occurrence with his father after the occurrence and saw the potatoes and jaggery scattered at the place of occurrence. However, P.W. 7 the Investigating Police Officer while describing the place of occurrence, has not mentioned about finding of potatoes or jaggery at the place of occurrence rather this witness said (paragraph 27) that at the place of occurrence he did not find, for seizure, scattered potatoes or jaggery. If the Investigating Police Officer did not find the potatoes or jaggery so that he could seize those, and no explanation for their absence from the scene when the Police came there has come on the record. P.W. 2 has admitted in Court (paragraph 91), when bicycle (material exhibit) was shown, that the bicycle was without carrier or its pressure. This situation also creates doubts about the claim of the informant.

38. P.W. 2 has claimed that Brahamdeo Paswan had thrust a towel in the mouth of the deceased stating (paragraph 18) that this was done at the time of murdering him. P.W. 5 has supported this saying that he had seen, when much after occurrence he came to the place of occurrence, the towel pushed inside the mouth of the deceased. However, the Investigating Officer said that he did not find any such cloth in the mouth of the deceased (paragraph 28). These are the circumstances which create reasonable doubts about the prosecution case.

39. Sri Lala Kailash Bihari Prasad argued on behalf of the State that having seen such a gruesome murder having been committed in their presence, naturally the witnesses who were close relatives of the deceased, could not have been in proper state of mind to tell other people assemble or whom they met, the names of the accused. Though learned Counsel pointed out that as per P.W. 3 at least name

of Krishna Singh was revealed by the informant but he could not answer satisfactorily when pointed out that informant himself has admitted that he did not tell the name of any person to the people of Karma village though they had continued enquiring about that.

40. The learned Additional Public Prosecutor, in that regard, placed before us a decision of the Apex Court in the case of Narain Singh and Ors. v. State of M.P. 1985 Criminal Court Cases (Cri.) 460. In that case the eye-witness, who was a guard of the deceased, had seen the occurrence but did not mention the names of the accused immediately but after composing himself, within ten to fifteen minutes he mentioned the names and also gave all the details. Their Lordships held that it was not uncommon for persons when they see a ghastly murder being committed in their presence that they almost lose their sense of balance and remain dumbfounded until they are able to compose themselves. A relative witness who had seen his kin murdered in his presence may not be in a mental state to reveal the details or the names soon after the occurrence. This may be natural but this hardly is natural for such a witness, rather witnesses as in this case, to remain bottled up for almost four hours and forty five minutes and not tell the names of the accused whom they had witnessed committing murder, to any one. As claimed, a large number of people had assembled there and the informant in Karma village and his father in his own village had no reason to be afraid of the assailants. The long period was time enough for them to compose themselves to the extent of revealing the names to other people.

41. Contradictions from their previous statements have also been taken from the witnesses. P.W. 2 stated that he had told the police the details of the incident, as to which appellant had played what role in the murder. This witness also denied that in his further statement he had not said that his father and two brothers-in-law were working in the nearby field at that time. However, the Investigating Officer admitted that such details about murder were not given by this witness. P.W. 4 has claimed that he had told the Police about scattering of potatoes and jaggery at the place of occurrence but P.W. 7 has admitted that this witness has not given such statement.

42. Sri Tara Kant Jha has argued that the letter was claimed by P.W. 2 to have been in the hand of appellant Krishna Singh, which was received by them twelve or thirteen days back. Earned Counsel submitted that appellant Krishna Singh, in course of cross-examination, denied that this letter was in his hand. When Krishna Singh was examined under Section 313 of the Code of Criminal Procedure he was generally asked about the letter but he was not confronted with the evidence that the letter had been written by him. In any case, as was rightly argued, no further evidence has been brought on the record, that the letter was in the hand of this appellant which could have been verified if that was sent to a hand-writing expert. It was also pointed out that no evidence was brought on the record that any of the appellants were members of the banned organisation, M.C.C. Rather evidence has come that when three of the accused including Krishna Singh were arrested, neither any fire arm nor any extremist literature was recovered from them. As already said about some of the appellants, the Investigating Officer admitted that nothing was found on the records which could show that they had connection with that organisation. Earned Counsel also pointed out that P.W. 4 had admitted that some of the accused had shops in his village and that he had no differences with Krishna Singh and Suresh Singh (paragraph 58), and that they were on visiting terms.

43. Now, if the appellants had no enmity or even differences with the informant side, they had no reason to murder Madan Singh unless it was proved that Madan Singh was killed by the extremist organisation and that the appellants belonged to that organisation. Sri Jha also argued that three of the appellants, including the main assailant Krishna Singh, was arrested in the night of occurrence in the village Maula Nagar which was not natural if only a few hours back they had committed such a ghastly murder of a co-villager.

44. Earned Counsel pointed out other situations also as to why the informant went to the 'Darwaza' of the Mill of Birendra Singh, when, as admitted by the witnesses, their relative Shanker Dayal Singh, whose 'Katchery' was demolished earlier, had his house in Karma village. P.W. 2 admitted that he had not gone to the house of Shanker Dayal Singh when he reached Karma village. Sri Jha also pointed out that though the informant side had allegedly received a letter, Exhibit-4, twelve to

thirteen days back, they did not inform any one, including the authorities about that, a fact admitted by the witness. To sum up, the main points coming out of evidence on record are:

(1) P.Ws. 2 and 4 have given identical details about the manner of occurrence claiming to be eye-witnesses.

(2) Place of occurrence is as claimed by Me prosecution.

(3) Presence of P.W. 4 at the place of occurrence is full of doubts, as discussed.

(4) P.W. 4 has claimed that he and his two sons-in-law had rushed to the place of occurrence and had seen the same but one son-in-law has not been examined and second one denied he has gone there saying that he had fled back to village.

(5) Neither P.W. 2 nor P.W. 4, as per their own evidence, for about four hours and forty-five minutes, till recording of 'fardbayan', had told any one the details of occurrence, or the names of assailants, though they met a large number of people and, as per P.W. 2, despite people of Karma village asking him all through the way back about that.

(6) Though close relatives of deceased are said to have seen the occurrence, but no attempt was made by any of them to inform police or any authority about the manner of occurrence or names of assailants. Police came on hearing rumours.

(7) Though in evidence detailed account of roles played by each appellants have been described, but no such account was given either in first information report or in statement before police, not even that two other appellants apart from Krishna Singh, were also attacking, with weapon, the deceased.

(8) Informant's claim that he and deceased were returning on cycle after purchase of jaggery tied with carrier of cycle and potatoes kept in a bag which got scattered, did not find support in evidence of Investigating Police Officer. In the Court, the cycle was found without carrier.

(9) Eye-witnesses claimed that cloth was pushed into mouth of deceased and another witness saying that afterwards also he saw cloth in mouth, but the

Investigating Police Officer denied any such finding.

(10) No cogent evidence has been brought on record that assailants were members of a banned extremist organisation, rather evidence of investigating officer points otherwise. If that was not proved, the appellants hardly could be said to have any motive to do the killing particularly when P.W. 4 admitted good and visiting relation with some of them, including with the main assailant.

(11) The letter, (Exhibit-4), has not satisfactorily been proved to be in the handwriting of Krishna Singh since his writing the letter was denied. Admittedly, this letter earlier was not shown to any authority or co-villager.

(12) Assailats made no attempt to harm the informant though he was witnessing the occurrence from near quarters and one appellant had fire-arm with him.

(13) Main assailant and two others were arrested the same night from the village Maula-Nagar, who claimed innocence.

These with other points discussed hereinbefore create doubts about the claim of the eye-witnesses that they actually had seen the occurrence. Merely parrot like description of the manner of occurrence given in Court will not prove the prosecution case if sufficient and reasonable doubts are created by attending circumstances about the genuineness of the prosecution case. There are sufficient circumstances as coming in the evidence which create reasonable doubts about the prosecution case in so far as manner of occurrence and participation of appellants in the crime are concerned.

45. In the result, I find that the prosecution has failed to prove its case, on any of the charges, against any of the appellants, beyond reasonable doubts. In the result, Criminal Appeal Nos. 61 and 139, both of 2001, are hereby allowed, and the judgment of the lower Court is set aside. All the appellants are acquitted of the charges framed against them and are directed to be released forthwith from custody if not wanted to be detained in connection with any other case. The death reference is also answered, accordingly.

Narayan Roy, J.

I agree.

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