

**Punit Markandey, Vs. the State of Bihar**

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**SooperKanoon Citation :** [sooperkanoon.com/849979](http://sooperkanoon.com/849979)

**Court :** Patna

**Decided On :** Apr-06-2010

**Judge :** Dharnidhar Jha and; Akhilesh Chandra, JJ.

**Appellant :** Punit Markandey, ;bahadur Markandey and ;ganga Markandey

**Respondent :** The State of Bihar

**Disposition :** Appeal allowed

**Judgement :**

**Dharnidhar Jha and Akhilesh Chandra, JJ.**

1. The present Criminal Appeal has been preferred by the three appellants against the judgement dated 15.4.1988 passed by the learned 14th Additional District & Sessions Judge, Munger in Sessions Trial No. 147 of 1978/, 192 of 1978/, 24 of 1982. By the above judgement and order of conviction appellants Punit Markanday and Ganga Markanday were found guilty of committing offences under Sections 302/149 and 307 of the Penal Code and were directed to suffer rigorous imprisonment for life as also of ten years on each of the above counts. Appellant Bahadur Markanday was found guilty of committing offences under Sections 302 and 307 of the Penal Code and was awarded the same sentences as were awarded to the above named appellants Punit Markanday and Bahadur Markanday. The sentences were directed to run concurrently.

2. Nirmal Mahto who is the son of the deceased Wakil Mahto gave his fardbeyan in which he stated that he along with his uncle Lucho Mahto were coming from somewhere and going to their house and when they reached near a Baswari (bamboo-clump), he had some feeling as if some persons were following them. It was dark. As such, the informant flashed his torch light but by that time the accused persons had surrounded the informant Nirmal Mahto and his uncle Lucho Mahto. It is alleged that appellant Bahadur Markanday and accused Sitaram Markanday were armed with DBBL guns and other accused persons like appellants Punit Markanday and Ganga Markanday were armed with farsa. Seeing the informant, they attacked the informant. Appellant Bahadur Markanday and the deceased accused Sitaram Markanday fired shots at the informant as a result of which he fell down injured. His uncle who was following the informant was also fired at and was injured by the accused persons. The informant having fallen down was assaulted by farsa by appellants Punit Markanday and Ganga Markanday and other accused persons.

3. The informant alleged that in the meantime, his father rushed from his Basa (it is a place which is away from the village settlement, where people generally keep their livestock and agricultural equipments) who was also shot at by the accused persons and he fell down dead. The accused persons, thereafter attempted to drag the father of the informant and the informant also but some of the accused persons suggested that the father of the informant be beheaded upon which appellant Punit Markanday and others attempted to behead his father, but in the meantime some vehicle appeared coming towards the site of occurrence as a result of which the accused persons ran away from there.

4. As may appear from the above narration, there was no motive assigned as to for what reason the accused persons would be opening an attack upon the informant and his uncle at a secluded place as pointed out by the informant. We shall revert back to this point a little later while considering the evidence of informant Nirmal Mahto.

5. However, it appears that the police investigated the case and sent up nine accused persons for trial and all of them were charged under Sections 302/149

and 307/149 of the IPC besides accused Sitaram Markanday and Bahadur Markanday had been charged under Section 302 of the Penal Code and 27 of the Arms Act. Two of the accused persons, namely, Jhaksu and Sitaram Markanday died during the course of the trial leaving the trial only seven accused persons out of whom four persons were acquitted by the impugned judgement. This is how the three appellants have preferred the appeal.

6. The defence of the accused persons as appears from the cross-examination of the informant Nirmal Mahto was of no occurrence taking place in the alleged manner and their false implication.

7. We are not describing any witness by their witness numbers because we find that there is an error in numbering the witnesses. Besides, one witness Dayanand Mahto was examined twice as P.W.1 and 4. The error appears creating quite some difficulty for us in picking up the witnesses by the number. We, as such, have chosen to refer to them by their names.

8. A total of seven witnesses were examined out of whom the star witness named in the FIR who was injured as well, namely, Lucho Mahto did not identify any of the accused and this was the reason he was declared hostile for that limited purpose, otherwise, he appears supporting the occurrence taking place at that particular place where the informant claimed it occurring. So far as P.W.1 Dayanand Mahto is concerned, he is not named in the FIR and we find that his evidence could not be acted upon for many reasons, the one being that he has added names which never appeared either in the FIR or in the statement of the informant Nirmal Mahto when he was examined in court during the trial. Besides, we find that he claims following the informant and Lucho Mahto while returning to his house, but if that had been a fact the informant must have mentioned that Dayanand Mahto was also coming, may be at some distance from him, at the same place and in the same direction. If it could have been true that Dayanand Mahto was coming in the same night and seen the occurrence then there was no reason for him to be not cited as a witness in the FIR by the informant. These are some of the reasons which have convinced us not to place reliance upon him. As regards the other witness examined subsequent to him, namely, Nityanand Mahto

he appears to be the brother of the informant, but he is not an eye, witness to the occurrence and claims learning about the occurrence from the injured Lucho Mahto. The difficulty with us is that Lucho Mahto does not say that he had narrated any incident to Nityanand Mahto after having returned from the place of occurrence. Even if we accept that Lucho Mahto had informed P.W.1 Nityanand Mahto about his father and brother being shot and injured by the accused persons then the names which have been taken by P.W.1 Nityanand Mahto as persons who had perpetrated the offence must have been the same who are the appellants before us or who had been put on trial along with the appellants. Curiously enough P.W.1 Nityanand Mahto points out different names who are persons other than the appellants and those who were charged for committing the offences. The third reason in not acting upon his evidence is that there is a grave doubt that he had seen any part of the occurrence or any one committing it. In cross-examination, P.W.1 Nityanand Mahto has stated that it was quite dark at the time of the occurrence though the night was a moonlit night. He has very specifically stated in cross-examination which appears at page 15 of the paper book that he did not have any means of identification and claims again identifying the accused in the moonlit night. We have already pointed out that in spite of being moonlit night darkness had enveloped the whole surroundings as per P.W. Nityanand Mahto. It is not an unusual and unnatural phenomenon. Even in moonlit night some parts of it gets dark on account of the elapse of the time for which moon could be shining in the sky. Probably, the witness was alive to this fact and as such he changed the mode of identification and stated that he had identified the accused persons by their voices. If this could be the stand of a witness on identification or if the witness is found changing his ground only in the second line of his evidence on the same fact then it is not safe for us to accept him as a reliable witness.

9. The night was dark is admitted by the informant also and that gets corroboration from P.W. Nitayanand, whose evidence we have just discussed in the preceding paragraphs. Nityanand Mahto was flashing the torch for identifying as to who were the persons who had surrounded him and P.W. Lucho Mahto, his uncle. The torch light had not been produced before the police by the informant. P.W. Lucho Mahto who was undisputedly accompanying the informant was examined and his depositions appear at page 40 of the paper book. From perusal of the evidence of

Lucho Mahto, we find that he has stated that the informant had, firstly, a torch light and, secondly, he had flashed that torch light for identifying the accused persons. What he has further stated is that about 50 persons had surrounded them, abused them and fired at them as a result of which he was injured and he ran away from there. This witness Lucho Mahto does not appear a witness to the incidence of murder of the father of the informant.

10. As regards the evidence of the informant, we have already pointed out in some earlier paragraphs of the present judgement that he has not stated as to what was the reason for the accused persons to go berserk and to commit the acts as are being complained of. There is reason for the informant not to state the background of relationship between him and the accused persons. If we go to his evidence in cross-examination which starts from page 20 of the paper book, we could find that there was bad relationship between the parties for some dispute in respect of some reasons. It may be for property, as appears from paragraph 7 of his evidence that there was a proceeding under Section 144 of the Cr.P.C. which was initiated between him and the accused persons. Not only that the proceeding Under Section 107 of the Cr.P.C. was also drawn up in between the parties. What appears from his cross-examination is that the S.D.O., Khagaria, Dy.S.P., Khagaria and the Inspector of the concerned circle appear questioning the informant in the hospital and probably he was not naming the accused persons in his statements before those authorities. He was seriously injured. There could not be any doubt about it, because he appears fired at from a very close range which is indicated by the evidence of P.W. Dr. Satish Chandra Prasad whose evidence appears at page 49 of the paper book and as per whom he had a lacerated sharp cut wound 8' x 3/4' x 2 1/2' with bleeding horizontally across the manila from one side of cheek to the other side of the cheek passing through nose and upper lip.

(ii) Sharp cutting wound 6' x 3 1/2' x muscle deep on the middle of lateral side of left thigh obliquely placed, muscle deep, sharply cut with bleeding.

(iii) Sharp cutting 3 1/2' x 1' x bone deep with profuse bleeding oblique placed across the lateral two-third and medial one-third of right clavicle sharply cutting the clavicular bone with injuries to vessels and lung.

(iv) Lacerated penetrating wound 1' in diameter circular in the middle of lateral side of right thigh with diffused dwelling of whole of thigh and fracture of femur with bleeding.

(v) incised wound across the right wrist sharply cutting wrist joint with complete separation of thumb except attached to the wrist.

(vi) Incised wound 1 x 1/2 x bone across the medial half of left wrist cutting the under lying bone.

11. In the opinion of the doctor injuries Nos. 1, 3, 4, 5 and 6 were grievous in nature and were caused by heavy sharp cutting weapon like farsa. Injury No. 4 could be caused by a fire arm and the injuries could be possible within six hours of the examination.

12. We do not have any doubt that Nityanand Mahto was attacked murderously. It was the sheer providence that he could survive the attack which was quite a brutal attempt on his life but simply that evidence of the doctor could not be sufficient for us to uphold the findings recorded by the learned trial court while recording the conviction of the appellants under Section 307 and 307/149 of the Penal Code. As soon as we doubt that there was no sufficient light at the scene of occurrence or there could be possibility that no one had been identified as appears from the evidence of P.W. Nityanand Mahto as also from P.W. Lucho Mahto, we cannot sustain the conviction of the appellants merely on conjectures. We find that there could be a probability that the accused persons who were inimically disposed towards the informant and his family might have been implicated for reasons other than reality. In our considered view, it is a case in which the appellants deserve to be extended the benefit of doubt and acquitted on that account.

13. In the result, we allow the appeal, acquit the appellants by extending to them benefit of doubt. We set aside the conviction and sentences passed against them as well. The three appellants are on bail. They shall stand discharged from the liabilities of their respective bonds.