

CASE NO.:
Appeal (crl.) 1969-1971 of 1996
Appeal (crl.) 256-258 of 1997

PETITIONER:
Bachhu Narain Singh

RESPONDENT:
Naresh Yadav and others

DATE OF JUDGMENT: 19/12/2003

BENCH:
N. SANTOSH HEGDE & B.P. SINGH

JUDGMENT:
JUDGMENT

State of Bihar
Vs.
Naresh Yadav and others

B.P. SINGH

In these appeals the appellants impugn the common judgment and order of the High Court of Judicature for Patna in Criminal Appeal Nos. 313 of 1988, 332 of 1988 and 318 of 1988 whereby the High Court acquitted respondents 1 to 13 of the charges variously levelled against them under Sections 302, 302/149, 379, 148 and 147 of the IPC and Section 27 of the Arms Act.

Criminal Appeal Nos. 1969, 1970 and 1971 of 1996 have been preferred by Bachhu Narain Singh, informant who was examined as PW-9 before the trial court. He happens to be the younger brother of one of the deceased Keshri Nandan Singh. Criminal Appeal Nos. 256, 257 and 258 of 1997 have been preferred by the State of Bihar against the acquittal of the aforesaid respondents by the impugned judgment and order.

Respondents 1 to 13 were put up for trial before the Second Additional Sessions Judge, Gaya in Sessions Case No. 57/86 / 8/86. The trial court by its judgment and order dated June 6, 1988 found respondent Naresh Yadav guilty of the offence punishable under Section 302 IPC and sentenced him to imprisonment for life. Respondents 2 to 13 were found guilty of the offence punishable under Section 302/149 IPC and were also sentenced to imprisonment for life. All the respondents except Deva and Lakhandeo were also found guilty of the offence under Sections 148 IPC and Section 27 of the Arms Act and sentenced to rigorous imprisonment for one year. Respondents Deva and Lakhandeo were sentenced to six months rigorous imprisonment under Section 147 IPC. Three appeals were preferred against the judgment and order of the trial court, namely, Criminal Appeal No. 313 of 1988 preferred by Lakhandeo Yadav ; Criminal Appeal No. 332 of 1988 preferred by Shiba Yadav and Criminal Appeal No. 318 of 1988 preferred by the remaining eleven accused. These appeals were initially heard by a Division Bench of the High Court but the learned Judges differed in their opinion while N.S. Rao, J. was of the view that the appeals ought to be allowed and the respondents acquitted, S.K. Chattopadhyaya, J. was of the view that the appeals had no merit and ought to be dismissed. In view of the difference of opinion the matter was placed before D.P. Sinha, J. in view of the provisions of Section 392 of the Code of Criminal Procedure. The third Judge, after hearing the matter at length by his

judgment and order of December 22, 1995 agreed with the view of N.S. Rao, J. and allowing the appeals acquitted respondents 1 to 13 of all the charges levelled against them. The appellants have impugned the aforesaid judgment and order of the High Court by special leave.

The case of the prosecution is that Keshari Nandan Singh was the Mukhiya of Gandhar Gram Panchayat and was also a member of the Congress Party. He was also practicing as an Advocate at Jehanabad. On April 19, 1985 while he was proceeding to the Jehanabad Court in a jeep driven by him accompanied by seven other persons including his personal security officer, his jeep was attacked by a group of persons who were variously armed with guns, rifles, Pasuli etc. when his jeep reached a point known as Dhamapur More on the Jehanabad \026Ekangar Sarai road about 5 kms. from the police station. The case of the prosecution is that a shot fired by respondent Naresh Yadav hit him as a result of which the vehicle went out of control and landed in an agricultural field which was at a slightly lower level than the road. The occupants of the vehicle tried to escape but they were fired upon by the members of the mob as a result of which six of them died at the spot while two of them were seriously injured. The case of the prosecution is that the two injured victims were removed to the Jehanabad hospital where they succumbed to their injuries. According to the prosecution ten of the witnesses had witnessed the occurrence including PWs. 1, 2, 3, 5, 6, 8 and 9. PWs. 4, 7 and 11 were tendered for cross-examination at the trial. The post mortem examination on the dead bodies of the deceased conducted by PW-13 Dr. Mithlesh Kumar Singh revealed that they had died homicidal death. The post mortem reports were exhibited at the trial as exhibit 6 series. PW-12 Tufail Ahmad (officer incharge Ghosi police station) who had reached the place of occurrence at about 7.20 a.m. investigated the case and ultimately submitted the charge sheet against 13 respondents herein.

We shall first of all notice the evidence of PW-12 Tufail Ahmad, the investigating officer, who had received an oral information at about 7.00 a.m. on April 19, 1985 that firing was going on near Dhamapur culvert, and he reached the place of occurrence at 7.20 a.m. with police force. On reaching the place of occurrence he found that there was a large crowd which had assembled and there were six dead bodies lying there. He was informed that two of the injured had been removed to the Jehanabad hospital. He also saw the jeep standing in the field towards north of the place of occurrence. He also saw the headless body of Keshari Nandan in the jeep. After reaching the place of occurrence he started preparing the inquest reports relating to the dead bodies. He had prepared five inquest reports between 7.30 a.m. and 8.45 a.m. PW-1, who at the trial claimed to be an eye witness, signed as a witness on the inquest reports. According to him by about 8.50 a.m. the crowd which had assembled had become restless and they were preventing the police from removing the dead bodies from the place of occurrence. At about that time two political leaders \026 one a Member of the Rajya Sabha and the other a Member of the Legislative Assembly belonging to the same caste as the deceased Keshari Nandan Singh came and pacified the mob. There was a commotion while he was preparing the inquest reports and he learnt that the hut of respondent Naresh Yadav had been set on fire in Gulgulia Tola. He alongwith Deputy Superintendent of Police and the Inspector of Police, who had reached the place of occurrence by then rushed to the 'dalan' of respondent Naresh Yadav and found that the roof of the 'dalan' had been set on fire. After deputing Sub-Inspector N.K. Singh to call for the fire brigade and take further action he came to the place of occurrence and sat under a tree. At about 9.00 a.m. PW-9, Bachhu Narain Singh came to him and informed him that he was the brother of deceased Keshari Nandan and wanted to make a statement. He, therefore, recorded the statement of PW-9 at 9.00 a.m. which was marked as

Ext. 4 on the basis of which formal first information report Ext. 5 was drawn up at the police station. He searched for the respondents but they were not found. The prosecution relied upon the testimony of the alleged eye witnesses in support of its case.

Some other facts may be noticed at this stage.

According to the first information report lodged by PW-9, while he was proceeding towards his pump house and was near the place of occurrence he had noticed the presence of 40 or 50 people including respondents 1 to 13 herein variously armed near the house of respondent Naresh Yadav. They were armed with rifles, guns and other weapons. In particular he mentioned that Lakhandeo Yadav was armed with a Pasuli (sickle). He noticed his brother's jeep coming from the eastern direction and proceeding towards the west on way to Jehanabad. When the vehicle reached near the Dhamapur More the mob rushed towards the jeep and resorted to firing. A shot fired by respondent Naresh Yadav struck the head of Mukhiya Keshari Nandan who was driving the jeep and as a result he lost control over the vehicle which came and fell in a field towards the north of the road. The members of the mob continued firing at the occupants of the jeep who were trying to escape. Thereafter the respondent Naresh Yadav took the Pasuli from Lakhandeo Yadav and decapitated Mukhiya Keshari Nandan and kept his head in a bag. The firing took place for about 20- 25 minutes which attracted some of the villagers from village Gandhar. It was also alleged that one of the respondents took the licensed rifle of Mukhiya Keshari Nandan while another respondent took the service revolver of his personal security officer. The culprits ran towards north except Lakhandeo Yadav, who after running towards north turned towards east and was apprehended by the villagers coming from village Gandhar. Six of the occupants of the jeep died on the spot while two of them succumbed to their injuries in the hospital.

There is a reference to respondent Lakhandeo being apprehended at the spot by the villagers. But it appears that Lakhandeo had come to the place of occurrence later and was surrounded by the villagers and assaulted by them at about 10.00 a.m. The defence of Lakhandeo was that one of the victims Rama Nand Yadav was his cousin as well as co-brother. Coming to know about the occurrence he had rushed to the place of occurrence to know about his cousin and co-brother and there he was apprehended by the villagers who had assembled there and who assaulted him. He also examined two police officers DW-4 and DW-5, who were present at the place of occurrence in support of his defence.

The case of the defence is that the prosecution witnesses were got up witnesses who had not witnessed the actual occurrence. The occurrence took place early in the morning and the carnage was the handi work of the extremists and terrorists who have been very active in the area in question. The respondents had no motive to commit such a gruesome crime taking the lives of as many as eight persons. The mere fact that there was some political rivalry between followers of the Congress Party and the Communist Party, was not a good enough reason for them to commit such a gruesome crime. Relying upon the evidence adduced at the trial by the prosecution itself it was contended that none of the persons present at the place of occurrence claimed to be an eye witness when the officer incharge of the Ghosi police station came there at 7.20 a.m. He prepared inquest reports between 7.30 a.m. and 8.45 a.m. but no one approached him claiming to be an eye witness. Two political figures belonging to the Congress Party came to the place of occurrence and it appears that only thereafter a false case was concocted against the respondents since the culprits were unknown and since the respondents were not the

supporters of the Congress Party but had supported the Communist candidate in the elections to the Legislative Assembly held in the month of March. It was further submitted on behalf of the defence that all the alleged eye witnesses belonged to the same caste, namely the caste of Mukhiya Keshari Nandan. Moreover none of them was examined by the investigating officer on the date of occurrence. Some of them were examined one or two days later and one of them was not examined at all in the course of investigation. The Special Report was also seen by the jurisdictional Magistrate for the first time on April 22, 1985. This only indicated that the first information report was concocted later after deliberations. They also pointed out the discrepancies in the statements of the witnesses recorded in the course of investigation and their depositions in courts.

On the other hand prosecution contended that in view of the evidence of a large number of witnesses and in view of the fact that the first information report was lodged within 2 = hours of the incident, there was no reason to doubt the case of the prosecution. The respondents had a strong motive to commit the crime and, therefore, the prosecution had proved its case beyond reasonable doubt.

D.P. Sinha, J. in a very well considered judgment has critically scrutinized the testimony of the alleged eye witnesses. After noticing the evidence of the alleged eye witnesses and the investigating officer, PW-12, he came to the conclusion that Fardbeyan appears to have been lodged within 2 = hours of the occurrence, but there is no plausible explanation as to why the report was not lodged by any of the eye witnesses after the investigating officer had reached the place of occurrence at 7.20 a.m. He was there at the spot preparing inquest reports between 7.30 a.m. and 8.45 a.m. and yet no one claimed before him to be an eye witness. It was only at 9.00 a.m. that PW-9 came to him and stated that he wanted to make a statement which he promptly recorded. He also found that the defence of Lakhandeo that he was not caught while running away from the place of occurrence but when he came to the place of occurrence much later on coming to know that his cousin was also one of the victims was true. He was apprehended by the mob but was got released from their clutches by the police officers there. It was also found that though the first information report was registered on April 19, 1985 but first order recorded in the concerned G.R. case record is dated April 22, 1985. However, he did not attach much importance to this delay since he was satisfied that the information was given by PW-9 to the investigating officer at 9.00 a.m. As regards motive he found that though no such motive was mentioned in the Fardbeyan, Ext.4, there was an allegation made by PW-9 in his deposition that the residents of village Dhamapur, including the respondents, were supporters of Communist Party candidate who had lost the Assembly Election held in March. Since a victory procession had been taken out headed by Mukhiya Keshari Nandan 10 \026 15 days prior to the date of incident to which they were strongly opposed, they had taken revenge by killing Mukhiya Kehsari Nandan. The learned Judge was of the view that assuming all these facts to be correct the facts did not disclose that the respondents had such a strong motive to commit an offence of this nature. However, he observed that the failure to prove sufficient motive by itself was not decisive and that the evidence of the witnesses had to be considered on its own merit. He noticed that all the witnesses belonged to the same caste and to the same village. No eye witness was examined who belonged to the village where the occurrence took place. According to the case of the prosecution the eye witnesses were present when the occurrence took place yet none of them claimed to be an eye witness when the investigating officer came to the place of occurrence. That apart, none of them was examined by the investigating officer on the date of occurrence. Some were examined on the following day and some still later and

one of them, PW-8, was not at all examined in the course of investigation. The learned Judge then examined the evidence of each witness and noticed the discrepancies/ inconsistencies in their evidence. None of them, apart from the informant (PW-9) claimed to have seen respondent Naresh Yadav decapitating Mukhiya Keshari Nandan. The evidence also disclosed that though an allegation had been made that one of the accused had taken away the licensed revolver of Mukhiya Keshari Nandan after the occurrence, PW-9 in the course of his deposition had to admit that the licensed revolver of Mukhiya Keshari Nandan was found under his pillow during investigation. The learned Judge also found that the prosecution case that respondent Lakhandeo was arrested while running away from the place of occurrence could not be accepted to be true since the evidence on record disclosed that he had come to the place of occurrence later. Having considered the deposition of each of the eye witnesses, the learned Judge did not find their evidence reliable. He, therefore, concluded that none of the eye witnesses could be considered trust worthy and reliable and it appeared that the killing of so many persons was the handi work of the extremist elements who have been active in that area for sometime. In fact from the evidence of the investigating officer it appeared that during the course of investigation some of the witnesses had stated that the culprits included some persons dressed in khaki which is usually worn by the extremists to create an impression that they belong to the police force. Having found their testimony to be not credible and trust worthy and having regard to other findings, he came to the conclusion that the prosecution had not proved its case beyond reasonable doubt.

We find no reason to take a different view because the findings recorded by the learned Judge are fully supported by the evidence on record and the circumstances of the case. In the first instance there appears to be no reason why no one stated before the investigating officer who came to the place of occurrence at 7.20 a.m. that he had witnessed the occurrence as an eye witness. Since they claimed to be eye witnesses and large number of persons had gathered at the place of occurrence when the investigating officer reached that place with police force, the normal course of human conduct would have been, for any of the eye witnesses to immediately inform the investigating officer that he had witnessed the occurrence. We fail to understand why from 7.30 a.m. till 8.45 a.m., while the investigating officer was preparing inquest reports no one came before him claiming to be an eye witness. The most interesting part of the story is the role of PW-1, Ramji Singh. He is a witness to the inquest report and obviously he was present when the investigating officer was preparing the inquest reports. He also claims to be an eye witness and has deposed as such. One fails to understand why he could not tell the investigating officer that he himself was an eye witness. This was sought to be got over by an argument that the villagers must have been shocked by the ghastly incident and therefore they did not make such a statement before the investigating officer. The argument is to be stated to be rejected. If PW-1 could be a witness to the inquest reports which were being prepared on the spot, there is no reason why he could not be the first informant in the case.

It has not been disputed and could not be disputed that the investigating officer came to the place of occurrence at 7.20 a.m. If the alleged eye witnesses were present, and there are as many as 10 of them, there is no reason why none of them came forward to lodge the report about the occurrence. PW-9, the informant was a brother of the deceased Mukhiya Keshari Nandan. If he had seen the occurrence, nothing prevented him from lodging the report immediately. He appears to have come on the scene more than an hour and a half after the investigating officer had come to the place of occurrence. His presence, therefore, at a time of occurrence appears to be highly doubtful. The fact that the report was lodged within 2 = hours of the

occurrence and was, therefore, not unduly delayed does not explain why it was not lodged earlier in the peculiar facts and circumstances of the case. The High Court has observed that if this was an ordinary case of murder, the time taken to lodge the report could be explained by reason of the fact that it may take some time for the members of the family to recover from the shock, to console each other, to make other arrangements before proceeding to have the matter reported. This is not one such case because the occurrence had taken place at about 6.30 a.m. and the investigating officer having reached the place of occurrence at 7.20 a.m. there was no explanation for the delay in lodging the report thereafter, which was lodged at 9.00 a.m. If the investigating officer was present at the place of occurrence and the eye witnesses were also present they would not have kept quite till about 9.00 a.m. when, for the first time, PW-9, appeared before him and lodged the report. There is, therefore, serious doubt about the presence of the eye witnesses when the investigating officer came to the place of occurrence, and this also casts a serious doubt as to their presence at the time when the occurrence took place. It is not a case of the prosecution that after the occurrence the eye witnesses had gone else where. In fact the evidence of the investigating officer is to the effect that a large crowd had gathered at the place of occurrence.

It is not necessary for us to consider the various discrepancies and inconsistencies found in the evidence of the eye witnesses by the High Court. Suffice it to say that their evidence does not inspire confidence and we entertain serious doubt about their being eye witnesses.

The case of the prosecution is that Lakhandeo respondent was one of the culprits and he also ran towards north alongwith all his companions. He, however, changed course and started running in a different direction only to be apprehended by the villagers coming from the side of village Gandhar. This story of the prosecution has been found to be untrue and for good reasons. As the High Court has observed, if really Lakhandeo had been apprehended by the villagers before the arrival of the police force he would have been immediately handed over to the police force if he had not been lynched earlier by the mob. This apart, there is direct evidence of two police officers who were present at the place of occurrence alongwith the investigating officer. They are DW-4 and DW-5, who were Inspector and Sub-Inspector of police respectively. They have deposed that at about 10.00 a.m. i.e. after one hour of the lodging of the report, there was a commotion and they found that one person was being assaulted by the villagers. They went to the rescue of that villager and found that the victim was Lakhandeo. Lakhandeo has pleaded that having come to know that his cousin, who also happens to be his co-brother may be one of the victims, he had rushed to the place of occurrence to find out about his welfare. However, when he came to the place of occurrence he was surrounded by the villagers and assaulted till he was rescued by the police party. The High Court has found that this part of the prosecution case is untrue and the defence of Lakhandeo appears to be truthful. To us also it appears that the prosecution is guilty of introducing false facts which have considerably shaken the credibility of the prosecution case.

Similarly, PW-9 in the report had stated that the revolver of Mukhiya Keshari Nandan had been taken away by one of the accused. However, in the course of his deposition he had to admit that the revolver of Mukhiya Keshari Nandan was found under his pillow in the course of investigation. The High Court has adversely commented on the credibility of PW-9. We may notice that according to this witness respondent Naresh Yadav decapitated Mukhiya Keshari

Nandan with Pasuli held by Lakhandeo. Apart from the fact that the presence of Lakhandeo has been found to be doubtful, none of the other witnesses has mentioned about Naresh Yadav beheading Mukhiya Keshari Nandan. This also shows the extent to which the informant could go in making out a false case because if what is stated was the fact, nine other eye witnesses noticing the same occurrence from different places could not have missed noticing this fact.

Having considered all aspects of the matter we find ourselves in agreement with the view taken by the High Court, and this being an appeal against acquittal, no interference is called for even if it was possible to take another view on the basis of the same evidence on record. However, we may hasten to add, having regard to the evidence on record, it is not possible to take any other view in the matter.

We, therefore, find no merit in these appeals and the same are accordingly dismissed.