

(1999) 11 PAT CK 0023

In the Patna High Court

Case No : Criminal Appeal (D.B.) No. 25 of 1986

Gaya Singh and Others

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 12-11-1999

Acts Referred:

Arms Act, 1959 — Section 27

Penal Code, 1860 (IPC) — Section 148, 149, 302, 307, 326

Citation : (2000) 1 BLJR 213

Hon'ble Judges : Ravi Nandan Sahay, J;P.K. Sarkar, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Ravi Nandan Sahay, J.—This appeal is from the judgment and order dated 9th January, 1986 of the 5th Additional Sessions Judge, Gaya in Sessions Trial No. 13 of the 1985/120 of 1980. All the appellants except appellant No. 1 Gaya Singh have been convicted under Sections 302 and 148 of the Indian Penal Code and Section 27, Arms Act. All the appellants have been sentenced to imprisonment for life under Sections 302/149 Indian Penal Code and three years u/s 148, Indian Penal Code, Appellant No. 1 Gaya Singh has been further sentenced to seven years" R.I. u/s 27 Arms Act.

2. The Charge and trial of the appellants related to the occurrence which happened on 4-6-1978 while Gram Panchayat Election was going on at Chowar. Bhola Singh was shot dead in the occurrence by a mob. The case of the prosecution has been narrated in paragraph Nos. 2 and 3 of the judgment under appeal as follows:

2. The prosecution case, in short, is that on 4-6-1978 the election of Mukhiya and Sarpanch of Chowar Gram Panchayat was scheduled to be held. Booth Nos. 72 and 73 were situated in the northern and southern parts of Chowar Middle School. As there was apprehension of breach of peace, hence statics armed force of 1-3 was deputed at each of the said booth, although the said booths were

situated in the school at one place side by side. Ahmad Hussain. The Presiding Officer of Booth No. 73, the informant of this case (P.W. 1), however, when learnt that some people will disturb the peace on the booths and nearby the booth and would not allow the weaker section to come to cast vote, then he sent information in this regard and then Ram Singh, Magistrate Incharge of 1-3 armed force of Wazirganj (P.W. 5) reached at Chowar on the said booths for maintaining peace and order there and then election was started at both the booths peacefully.

3. The prosecution case, further, is that when the election was going on peacefully, then at about 9.30 a.m. some voters including Balo Singh (deceased), Munna Singh and others came at the booth No. 73 and informed the informant (P.W. 1) that when they were coming to cast their votes in the said booth then on the way the people of Paharpur had tried to stop them and when they had not listen to their command then they had chased them. Thereafter, Balo Singh and others casted their votes. When Balo Singh came on the Varandah after casting his vote and boarded down from the Varandah, then all on a sudden a firing was done from the southern side which hit Balo Singh due to which he fell down and died instantaneously on the spot. Then the other voters were terrified and began to conceal themselves hither and thither and raised alarm to save them. Munna Singh of village Punaul (P.W. 9) at that very time told the Presiding Officer of Booth No. 73 the informant (P.W. 1) that Gaya Singh had fired by his rifle at Balo Singh due to which he died. The informant (P.W. 1) then saw a mob of about 50-60 persons armed with rifle and gun at a distance of about 40 yards only and they were coming to the booths from southern and eastern side and were firing indiscriminately. Some members of the mob were also throwing brick bats. Due to the indiscriminate firing the polling officer Indran Ram (P.W. 2) and Usha Devi sustained injury on their person. The constable Ali Hassan also sustained injuries by brick-bats. Some people of the mob were also instigating to kill them and to snatch away the rifles of the armed force and to loot away the ballot boxes and the mob started approaching towards the booths. The informant (P.W. 1) then gave several warnings and then told them that if they would not go back then firing would be done and that they may be killed. But, this warning did not bring any fruitful result. Then, he at last ordered the armed force (Ext. 1) for firing and then 7 rounds of firing were done, Prem Singh, Magistrate incharge of the armed force (P.W. 5) had also ordered (Ext. 1/1) for firing and then 9 rounds of firing were done by his armed force. Thus, 16 rounds firing were done by the armed forces which were deputed to maintain peace and order at the said two booths. Due to the said firing some members of the mob sustained injuries and fell down. Thereafter, the mob fled away and the mob carried away those persons who had sustained injuries by firing done by the armed force.

3. The defence of the appellants was that at the same place and time prosecution witnesses of this case and their companions had opened fire causing bullet injuries to appellant No. 2 Mahendra Singh and Ram Briksh Singh for which a separate case had been instituted. Charge-sheet was submitted in the counter-

case but the trial ended in acquittal without any witnesses being examined.

4. The Officer Incharge of Wajirganj Police Station got information at about 2.15 p.m. about the occurrence. He made Sanaha Entry No. 75 dated 4-6-1978 and proceeded to occurrence village. He reached there at 3.00 p.m. and met Rishikesh Singh, S.I. of Police and received written report (Ext. 2) and inquest report (Ext. 6) prepared by him. The Officer-in-Charge of Wajirganj Police Station started investigating the case. He returned to the Police Station and drew a formal F.I.R. (Ext. 4) against Gaya Singh, Mundrika Singh, Kedar Singh, Ratan Singh, Nityanand Singh and Mahendra Singh. They were named accused in the F.I.R.

5. According to the defence, whole case has been concocted against the appellants. Real fact was that on the date of election i. e. 4-6-1978 at about 8.00 a.m. Ram Brichh Sharma of village Manmadho and appellant Mahendra Singh of village Paharpur went to Chowar Booth for casting their votes. When they reached a distance of about 20 yards then all on a sudden Munna Singh and Bharat Singh of village Chowar armed with gun came near them hurriedly from the northern side. Munna Singh fired on them all on a sudden. Mahendra Singh sustained serious injuries on his back, and the pellet had crossed his body. Ram Brichh Sharma also sustained injuries at his left hand. They were removed to Pilgrim Hospital where his fardbeyan (Ext. B) was recorded at 3.00 p.m. by Bhagwat Prasad, the then S.I. of Kotwali P.S. and on the basis of said fardbeyan Wajirganj P.S. Case No. 4(6) 78 (Ext. B) was registered against Munna Singh and Bharat Singh, The Officer-in-Charge of Wajirganj Police Station, who had investigated the present case also investigated the counter-case and in the counter-case charge-sheet was submitted against 5 persons under Sections 148, 149, 307, 326, I.P.C. and 27, Arms Act. Counter-case, as stated earlier, ended in acquittal and acquittal has been challenged in Cr. Rev. No. 629/84 before this Court.

6. Further case of the defence was that the accused-persons of counter-case and some other persons prevented voters from casting their votes and they had virtually captured the booth. Sunil Kumar Verma (D.W. 1) has stated that about 200 persons assembled in front of the booth and started brick-batting. Presiding Officer went inside the room and ordered for firing. Firing was done from inside the room to scatter the mob. Some persons including Balo Singh tried to enter inside the room. In the mean-time-Balo, Singh received gun-shot injury from the police firing and he died. The defence further alleged that the informant and others had learnt about the institution of the counter-case and then with a view to save the skin of the officers, who had ordered firing in which Balo Singh had died, the informant hatched up this case with the help of the supporters of Alakhdeo Singh. All these facts have been gathered from the judgment under appeal.

7. Following is the summary of the evidence that has been brought on record by the prosecution on the strength of which the trial Judge recorded his verdict.

Ahmad Hussain on whose fardbeyan case was registered was Presiding Officer of Booth No. 73 of Chowar Constituency. The informant, according to the trial Judge, has fully supported the case as made out in the fardbeyan. This witness has deposed that on the date of occurrence at about 9.30 a.m. Munna Singh (P.W. 9) and Balo Singh (deceased) came to the booth and informed that when he along with others were coming to cast their votes on their booth, then the people of village Paharpur had stopped them and asked not to cast their votes. When they refused to oblige them, they were chased. Balo Singh cast his vote and came out at the varandah. At this point of time, there was firing and Balo Singh was hit. He fell down and died on the spot. Munna Singh told him that Gaaya Singh had fired. Thereafter a mob of 50, 60 persons were seen coming towards the booth from southern and eastern side armed with fire-arms and raising slogans. Some members of the mob were also firing indiscriminately. Polling Officer (P.W. 2), Havaldar Mir Ali and Usha Devi had sustained injuries on their persons. The informant warned the mob not to behave in that manner otherwise there would be firing. When this warning was ignored by the mob, the informant ordered the armed forces to fire and then 7 rounds of firing was done. Ram Singh, Magistrate incharge of armed forces had also ordered for firing and then 9 rounds of firing were done. This resulted in injuries to some persons in the mob. The members of the mob fled away carrying the persons who had sustained injuries. Munna Singh, Ram Lakhan Singh, Satya Narain Singh and others had disclosed that they had identified the appellants in the mob.

8. Learned trial Judge has given full weight to the evidence of the informant since he was an independent witness.

9. Indran Ram (P.W. 2) was Polling Officer. The version of the informant finds support from the evidence of Indran Ram. This witness had said that he had received injuries on his right ear by the firing done by the mob.

10. Bal Govind Singh (P.W. 6), Satyanarain Singh (P.W. 8), Munna Singh (P.W. 9) and Ram Lakhan Singh (P.W. 10) were on the Booth and they have given their version of the occurrence. All these witnesses are of village Punaul. They all have supported the prosecution case.

11. Learned trial Judge found the appellants guilty on the basis of the evidence of Bal Govind Singh (P.W. 6), Satyanarain Singh (P.W. 8), Munna Singh (P.W. 9) and Ram Lakhan Singh (P.W. 10). The informant Presiding Officer had no idea about the house of accused-persons. He named the assailants when other witnesses disclosed their names. Learned trial Judge, however, was not correct in ignoring the infirmity in the prosecution case.

12. The first police officer, who reached the place of occurrence is Rishikesh Singh, who was not examined by the prosecution. The Investigation Officer reached there on rumour about the incident. Written Report was given to Rishikesh Singh at 2.00 p.m., while the occurrence had taken place at 9.30 a.m. There is no evidence that Munna Singh and other witnesses, who had disclosed

the name of the appellants to the Presiding Officer-informant, were present there. There is no explanation as to why there was no such delay in informing the police when the Police and Magistrate were on Polling Duty. Endorsement on the written report of the informant Presiding Officer shows that it was handed over to Rishikesh Singh at 2.00 p.m. None of the eye-witnesses, namely, Munna Singh, Bal Govind Singh and Ram Lakhan Singh were found at the place of occurrence. The Investigating Officer failed to locate them that night in the village. The witnesses have not stated about their whereabouts after the occurrence.

13. The most damaging part of the evidence is that Munna Singh in his statement to the Investigating Officer stated that he had not named any accused-persons before the Presiding Officer and the members of the Polling Party and other officers. Similarly, Ram Lakhan Singh (P.W. 10), who according to the official witnesses had named Gaya Singh and other appellants, but he told the Investigating Officer that he had not named any accused-persons before the informant or other officers. Bal Govind Singh is Sarhu of Munna Singh. The Investigating Officer has denied that the witnesses had told him the names of accused-persons when he was examined on the next day. Witness Satyanarain Singh, Sarhu of Bal Govind Singh stated that he had disclosed the name of only Gaya Singh before the Presiding Officer, Munna Singh, who is most important witness of this case, has stated that he was at the Booth till evening. This cannot be true in view of the evidence of the Investigating Officer, who did not find any eye-witness at the Booth when he reached there at 2.00 p.m. Similar is the evidence of Ram Lakhan Singh.

14. A counter Case was filed by Ram Brichh Sharma in which charge-sheet had been submitted. According to the counter-version, Mahendra Singh appellant No. 2 was going to the Booth to act as Polling Agent and there was firing from the Booth. This is to be noticed that according to the First Information Report the appellants are alleged to have prevented the voters from going to the Booth which fact was conveyed to the Presiding Officer by Munna Singh and others. This could be the reason to implicate these appellants on the basis of circumstantial evidence. Appellant No. 1 and appellant Nos. 3 to 6 are own brothers. The main contest was between Alakh Singh and Sakaldeo Singh for the post of Mukhiya of Chowar Village. Munna Singh and other eye-witnesses admittedly were supporters of Alakh Singh. Village Chowar is dominated by the Caste of Munna Singh.

15. One Sunil Kumar Verma (D.W. 1) Rajpoot by Caste was also candidate for the post of Mukhiya. This witness has stated that he had gone to the Booth at 8.00 a.m. and had seen some people exploding bomb outside the Booth. At 8.30 a.m. there was hulla that Mahendra Singh had received gun-shot injuries. This witness deposed that the villagers of Chowar belong to Bhumihaar community and were preventing the voters from going to the Booth to cast their votes. He has named Munna Singh, Satya Narain Singh, Bal Govind Singh and Ram Lakhan Singh of

Chowar and also Mahendra Singh, etc. as the persons who were preventing the voters. These persons were working for Alakh Singh, They went inside and captured the Booth. This witness has made allegation against the Presiding Officer of the Booth that Polling was stopped at 9.30 a.m. The Presiding Officer of the Booth was inside the room and there was firing on the orders of the Presiding Officer and this created stampede. According to this witness, Balo Singh was injured by police firing. This witness had informed the Zonal Magistrate of Tarva and police party was sent by the Zonal Magistrate. This witness, however, is the brother of the appellants. This witness has denied that Mahendra Singh was injured in police firing. Similar is the evidence of Krishnandan Prasad (D.W. 2).

16. On analysis of the evidence, I find that there is no explanation why the Presiding Officer did not immediately inform the police about the occurrence. The Officer-in-Charge of Wajirganj Police Station had reached at the place of occurrence on rumour. None of the so-called eyewitnesses were found at the place of occurrence and there is no evidence about their whereabouts after the occurrence. According to the evidence of the Investigating Officer, eye-witnesses, who had named the appellants had not stated that they disclosed the name of Gaya Singh and other appellants to the Presiding Officer. It is stated that the Presiding Officer had named the accused-persons on some other information that accounts for the delay. .There is evidence of Caste rivalry. Bal Govind Singh, Satyanarain Singh, Munna Singh and Ram Lakhan Singh belong to one case, who were supporters of Alakh Singh. Appellant Mahendra Singh was injured in the same occurrence when he entered in the Booth. Even if the evidence is accepted on its face value, the allegation is only against Gaya Singh. There is no evidence against any other accused-persons. The evidence against Gaya Singh is also not free from doubt.

17. In my considered opinion, it is a fit case in which benefit of reasonable doubt may be given to the appellants. Accordingly, this appeal is allowed, conviction of the appellants is set aside and they are acquitted. All the appellants are on bail. They are discharged from the liability of their bail-bonds.

P.K. Sarkar, J.

18. I agree.