

CRIMINAL APPEAL No. 29 OF 1993
WITH
CRIMINAL APPEAL NO. 36 OF 1993
WITH
CRIMINAL APPEAL NO. 50 OF 1993

Against the judgment of conviction and sentence dated 29.1.1993 passed by Sri Damodar Prasad, 4th Addl. Sessions Judge, Motihari in Sessions Trial No. 122/4 of 1977/91.

1. Bijli Singh		
2. Bishwanath Singh	Appellants
		(in Cr.A.No.29/93)
1. Gajendra Singh		
2. Nawal Singh	Appellants
		(in Cr.A.No.36/93)
Kapildeo Singh	Appellant
		(in Cr.A.No.50/93)

Versus

The State of Bihar	Respondents
		(in all the three appeals)

For the appellants :	M/s Kanhaiya Prasad Singh, Sr. Advocate and Uma Shankar Verma
For the State :	Mr. Ali Muzaffar, Addl. P.P.

P R E S E N T

THE HON'BLE MR. JUSTICE SHYAM KISHORE SHARMA

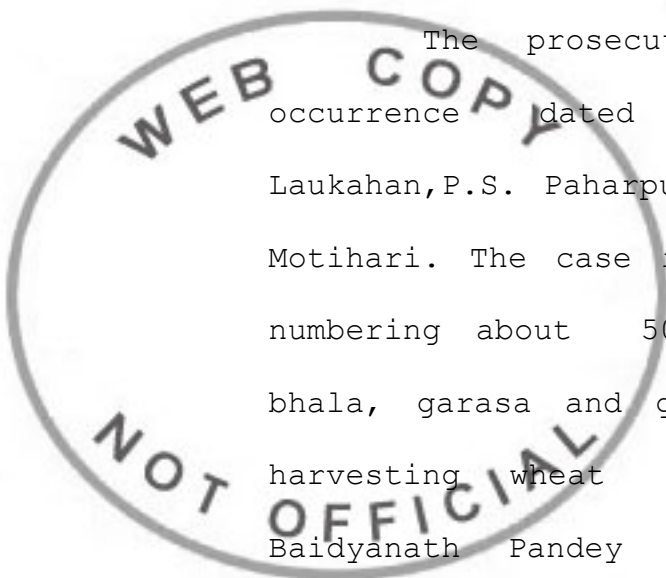
S.K.Sharma, J.

Since all the above three appeals have arisen out of one common judgment, they have been heard together and are being disposed of by this judgment.

By the impugned judgment dated 29.1.1993 passed by 4th Additional Sessions Judge, Motihari in Sessions Trial No. 122/4 of 1977/91 appellants Gajendra Singh and Nawal Singh (Cr.Appeal No. 36 of 1993) have been convicted under Section 304

part I of the Indian Penal Code and have been sentenced to undergo rigorous imprisonment for seven years, appellants Bijli Singh and Bishwanath Singh (Cr.Appeal No. 29 of 1993) have been convicted under Sections 304 Part II of the Indian Penal Code and have been sentenced to undergo rigorous imprisonment for five years and appellant Kapildeo Singh (Cr.Appeal No. 50 of 1993) has also been convicted under Section 304 Part II but has been sentenced to undergo rigorous imprisonment for three years keeping into consideration his old age.

The prosecution case relates to an occurrence dated 13.4.1976 at village Laukahan, P.S. Paharpur, District East Champaran, Motihari. The case is that the accused persons numbering about 50 to 60 armed with lathi, bhala, garasa and gun were allegedly forcibly harvesting wheat crops belonging to one Baidyanath Pandey of village Laukahan. One Bishwanath Mahto was a member of Communist Party of India and also Secretary of the said party forbade appellant Kapildeo Singh from forcibly harvesting the wheat crops from the field of Baidyanath Pandey and requested him to settle the



dispute through **panchaiyati**. While the talk of purported **panchaiyati** was going on, some one from the mob of appellant Kapildeo Singh threw brick on the member of Communist Party. Other side also threw brick and thereafter brick battings started from both sides and in the meantime, appellant Gajendra Singh fired 8 to 9 times with his single barrel gun. Informant Gulli Raut, Hari Ram, Ramautar, Ram Bilas and others received injuries and on account of firing six persons were killed. The injured were taken to Paharpur hospital and from where they were transferred to Maharani Janki Kuar Hospital, Bettiah for treatment. The accused persons were identified and on the basis of fardbeyan of Gulli Raut, Paharpur P.S. Case No. 10(4)76 under Sections 147, 148, 149, 337 and 302 of the Indian Penal Code, 27 Arms Act and 69 D.I.R. was registered against these appellants and others.

Prior to institution of this case, fardbeyan of Dhanayee Raut who was Chaukidar of village Laukahan was also recorded at the place of occurrence itself by the police and on the basis of which Paharpur P.S. Case No. 8(4)76 was registered. Chaukidar Dhanayee Raut in his

fardbeyan has stated that on 13.4.1976 at about 7.00 A.M. he was also getting his wheat crops harvested. At that time, he saw accused Kapildeo Singh of village Mankararia sitting on a trailer of a tractor. At that time other appellants and other accused persons were also seen sitting on a tractor and they were having traditional weapons like bhala, garasa and lathi in their hands but accused Nawal Kishore Singh was armed with gun. Accused Kapildeo Singh told him that the members of the Communist Party were adamant in looting the wheat crops. Accused Kapildeo Singh also told him to forbid them not to do so. Thereafter Chaukidar Dhanayee Raut went behind the tractor and when he reached village Laukahan, he saw Lal Babu, Mahal Chaukidar and asked him to go to Paharpur police station immediately to inform that there was likelihood of breach of peace. He returned to the field of Kapildeo Singh and saw the labourers of Kapildeo Singh making bundles of wheat crops. The tractor was also there. The labourers engaged in loading the wheat crops. In the meanwhile, 500 persons came there with traditional weapons like lathi, bhala etc. and raised slogans. Both side indulged in brick

battings and thereafter the members of the Communist Party also set fire the bundles of wheat crops. Thereafter at the behest of Kapaildeo Singh, Nawal Kishore Singh fired indiscriminately and six persons fell down. Five persons were died. Chukidar and Dafadar were present there. The investigation was taken up firstly on the informant of Chaukidar Dhanayee Raut. Thereafter on the fardbeyan of Gulli Raut, as stated above, Paharpur P.S. Case No. 10(4)76 was registered and the case was investigated thoroughly by the police and after completion of investigation, charge sheet was submitted in Paharpur P.S. Case No. 10(4)76.

The defence of the accused persons was that plot no. 611 under khata no. 124 area one and half bigha of village Laukahan belonged to accused Bishwanath Singh and the plot was in possession of the accused. The wheat crops were grown by the accused persons and the members of the Communist Party were inimical with the accused persons as they were insisting to return the said land to Baidyanath Pandey because the said land was originally belonged to the family of Baidyanath Pandey. Further defence was that

the members of the Communist Party was adamant to loot away the wheat crops. They were numbering about 500 to 700. When the appellants went to their field in order to protect their wheat crops grown by them, Babulal son of Chaukidar Baldeo was sent to the police to inform the matter. Chaukidar Dhanayee Raut was also with them who forbade the other sides from looting the crops but they started pelting stones and bricks. The members of the Communist Party also surrounded and assaulted with lathi, bhala inflicting injuries to 9 to 10 persons of the defence side.

The members of the prosecution side also set fire the bundles of wheat crops. Further defence is that as the accused persons were apprehending danger that they would be killed by the members of prosecution party and wheat crops grown by them would be looted away, they used the right of private defence of person as well as the property and fired resulting the death of six persons. A complaint was also lodged by accused Bishwanath Singh against 31 persons belonging to the prosecution party.

On behalf of the prosecution, altogether 23 witnesses were examined to prove its case.

They are Mahesh Ram (P.W.1), Hari Mahra (P.W.2), Gulli Raut, the ifnoramnt (P.W.3), Balram Pandey (P.W.4), Ram Pravesh Pandey (P.W.5), Parsuram Raut (P.W.6), Bhulan Mahto (P.W.7), Ram Bilas Prasad (P.W.8), Ram Autar Mahto (P.W.9), Bhika Raut (P.W.10), Jagarnath Pandey (P.W.11), Bishwaanath Prasad (P.W.12), Baijnath Pandey (P.W.13), Balmukund Pandey (P.W.14), Dr.Nasrul Hoda (P.W.14A), Bhola Prasad, Investigating Officer (P.W.15), Dr.Bikramaditya Pandey (P.W.16), Ramjeet Sahni (P.W.17), Ram Chandra Prasad (P.W.18), Lal Babu Prasad (P.W.19), Jagat Narayan (P.W.20), Sharda Nand Prasad (P.W.21) and Chandra Ket Singh, Investigating Officer (P.W.22). One Jayanand Jha has been examined as court witness.

Out of above 22 prosecution witnesses, P.Ws.1,2,3,7,8 and 9 were injured witnesses and P.Ws.4,5,6,10,11,12 and 13 were eye witnesses. P.Ws. 14,17,18 19 and 20 are formal witnesses. P.W.21 was declared tendered. P.W.16 Dr.Bikramaditya Pandey has held post mortem of the deceased. P.W.14A Dr.Nonul Hoda had treated the injured. P.Ws. 15 and 22 are the Investigating Officers of the case. Jay Nandan

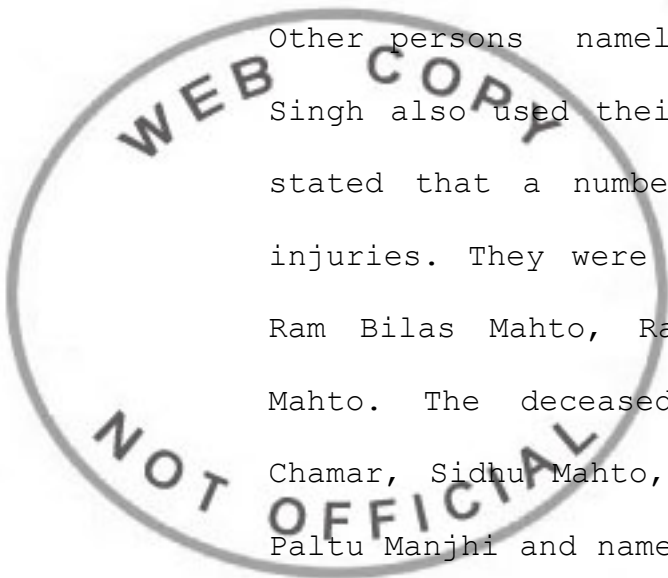
Jha, Inspector of Police, has been examined as court witness.

The court witness in his evidence has stated that he took charge of Paharpur P.S. Case No. 8(4)76 from P.W.22. This witness also stated that one of the accused Vijli Singh during course of investigation had surrendered before him along with fire arm. According to this court witness, he handed over the charge to Sri Bhola Prasad, P.W.15. He had also received fardbeyan of Gulli Raut recorded by Sub-Inspector of Police, Bettiah Town P.S. on 15.4.1976.

The defence has also examined 7 formal witnesses. They are D.W.1 Chuman Prasad, D.W.2 Jawahar Lal Sah, D.W.3 Bipin Tiwari Sharma, D.W.4 Dr.Sita Ram Prasad, D.W.5 Bashishth Narayan Singh, D.W.6 Krishna Kumar Singh and D.W.7 Durga Mishra..

P.W.3 is the informant of this case and is an injured witness. He has stated that about six and half years ago which was Tuesday at about 8.00 A.M. he was going to doctor and when he reached near the filed of Kapildeo Singh, he saw 50 to 60 persons armed with lathi, bhala, garasa and gun and others who were **panches** were without

any arm. At that time, Bishwanath Singh was telling that the matter would be resolved through **panchaiti**. At that time, the men of Kapildeo Singh were harvesting the wheat crops. Bishwanath Singh and others were asking to resolve it first. In the meantime, man of Kapildeo Singh started pelting stone and thereafter exchange of bricks batting started. He further stated that at the behest of Kapildeo Singh, Gajendra Singh fired. Some other persons were also engaged in firing who were not identified. He further stated that six persons were died on account of firings. Other persons namely, Kapildeo Singh and Bijli Singh also used their weapons. This witness has stated that a number of persons were received injuries. They were Hari Chamar, Mahesh Chamar, Ram Bilas Mahto, Ram Avatar Mahto and Chuman Mahto. The deceased were described as Suman Chamar, Sidhu Mahto, Jagdish Singh, Gorakh Sah, Paltu Manjhi and name of one of the deceased was not in the memory of this witness. The injured were brought to hospital where they were treated. According to this witness, the reason for the dispute was a field which earlier belonged to Baidyanath Singh but that field has



gone inside of accused Kapildeo Singh. A **Panchaiti** was organized for harvesting the wheat crops which was grown by accused Kapildeo Singh.

Identical evidence is of other injured and eye witnesses who are P.Ws.1,2,5,6,7,8,9,10,11,12 and 13 and they have stated that on the date and time of occurrence, some persons on behalf of appellants were harvesting the field. At that time, other side also went to the place of occurrence and asked them not to harvest the crops until matter is resolved amicably by the **Panches**. In the meanwhile, some persons started pelting stones. Thereafter, both sides indulged in brick battings and one person fired indiscriminately which caused death to six persons and injuries to a number of persons. In their evidence, except some minor contradictions, there is nothing from which their evidences could be discredited. Though the defence has asked many questions to these witnesses but they remained intact saying that on the date and time occurrence, there was altercation which led to killing of six persons and injured to a number of persons.

Learned counsel for the appellants has

submitted that in this case the aggressors were the prosecution party. They had at all no right, title and interest over the field of Kapildeo Singh and without any authority they wanted to disturb Kapildeo Singh and the appellants have exercised their right of private defence. The trial court after scrutinising the papers available on record as well as the evidences of prosecution itself came to the conclusion that the appellants were the original owner of the land in question and the prosecution party had no right to disturb the right and title of the appellants. So the court below came to the finding that it was a case of right of private defence but the appellants have exceeded the same.

Learned Addl.P.P. has submitted that the judgment of conviction and sentence of the appellants passed by the court below is correct and requires no interference by this court.

After analysing the evidences of the prosecution as well as the defence and also perusing the papers available on the record I came to the conclusion that the appellants were the original owner of the land in question and

the prosecution party had no right to disturb the possession of the appellants. However, it is clear that that the appellants have exceeded the right of private defence. Other side namely, the members of prosecution party were without any arm at the time of occurrence and they have not caused any serious act or there were no circumstances from which any inference could be drawn that they were adamant to kill or caused grievous harm to the appellants. So, in my opinion, this is a case in which the accused persons have exceeded their right of private defence and the reason given by the court below in convicting the appellants is correct and requires no interference by this Court.

However, on the question of sentence, learned counsel for the appellants has submitted that the occurrence is of the year 1976 and 32 years have elapsed and at the time of judgment itself in the year 1993 the appellants were at an advanced age and one of the appellants namely, Kapildeo Singh, was of 90 years old whereas another appellant Bijli Singh was 60 years and rest of the appellants have also crossed the most period of their lives and if all these things

are taken into consideration, no useful purpose will be served if the appellants are sent to jail and so their sentences may be reduced to the period already undergone by them in custody which may be sufficient for the ends of justice.

I am in full agreement with the submission of the learned counsel for the appellants and the sentences of the appellants are fit to be modified. Accordingly, the sentence of the appellants is modified and are reduced to the period already undergone by them in course of trial and appeal which shall be sufficient for the ends of justice.

In the result, all the above three appeals are dismissed with modification in sentence.

(**Shyam Kishore Sharma, J.**)

Patna High Court, Patna
The 7th February, 2008
Tahir/- (NAER)