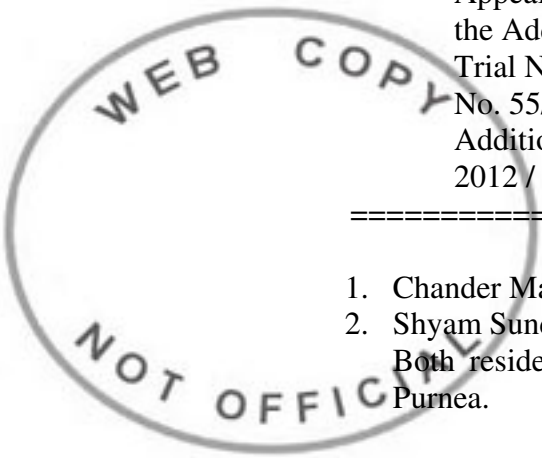




IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.1141 of 2006

Appeal against the judgment/order dated 14.11.2006/15.11.2006 passed by the Additional Sessions Judge (Fast Track Court No.1) Purnea, in Sessions Trial No. 1162/2001/Trial No. 46/2003, arising out of Barhara P.S. Case No. 55/2000 and judgment/order dated 09.04.2013 passed by Adhoc Additional Sessions Judge No. VIII, Purnia in Sessions Trial No. 406 of 2012 / Trial No. 409 of 2012.

- =====
1. Chander Mandal son of Late Basdeo Mandal
 2. Shyam Sunder Mandal son of Late Baldeo Mandal
- Both resident of village Barhara Godhiyari, Police Station-Barhara, District-Purnea.

.... Appellant/s

Versus

State of Bihar

.... Respondent/s

with

=====

Criminal Appeal (DB) No. 1193 of 2006

Arising Out of PS.Case No. -55 Year- 2000 Thana -BARHARA District- PURNIA

=====

Palta Paswan son of Dhokai Paswan, resident of village-Barhara Godhiyari, Police Station-Barhara, District-Purnea.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

with

=====

Criminal Appeal (DB) No. 129 of 2007

Arising Out of PS.Case No. -55 Year- 2000 Thana -BARHARA District- PURNIA

=====

Chutaharu Mandal, S/o Late Sukhdeo Mandal, R/o Village- Goriyari, P.S.-Barhara, District-Purnea.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

with

=====

Criminal Appeal (DB) No. 536 of 2013

Arising Out of PS.Case No. -55 Year- 2000 Thana -BARHARA District- PURNIA

=====

Lachcho @ Laxman Mandal S/o Late Kari Mandal Resident of Village- Godriari, P.S- Barhara, District- Purnia.

.... Appellant/s

Versus

The State Of Bihar

.... Respondent/s

Appearance :

For the Appellant/s :

Mr. Vivekanand Singh, Adv.

Mr. Harendra Kumar Singh, Adv.

Mr. Bijendra Kumar Singh, Adv.

For the State :

Mr. Ashwani Kr. Sinha, Adv.

CORAM: HONOURABLE MR. JUSTICE V.N. SINHA

and

HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE V.N. SINHA)

Date: 03-02-2015

These four criminal appeals arise out of Barhara P.S. Case No. 55 of 2000. Cr. Appeal Nos. 1141, 1193 both of 2006 and 129 of 2007 arise out of judgment and order dated 14/15.11.2006 passed in Sessions Trial No. 1162 of 2001, Trial No. 46 of 2003 whereunder appellants in the aforesaid three appeals have been convicted for the offences under Sections 302/34, 364 of the Penal Code and sentenced to suffer rigorous imprisonment for life and R.I. for 10 years respectively. Criminal Appeal No. 536 of 2013 is arising out of judgment dated 9th April, 2013 passed by Ad hoc Additional Sessions Judge, VIII, Purnia in Sessions Trial No. 406 of 2012, Trial No. 409 of 2012 whereunder the sole accused appellant in the said criminal appeal has been convicted for the offence under Sections 302/34, 364/34 of the Penal Code and asked to suffer R.I. for life under Section 302/34 with further direction to pay fine of Rs. 10,000/- and for the offence under Section 364/34 of the Indian Penal Code he has

been sentenced to suffer 10 years R.I. with further direction to pay fine of Rs. 5000/-. In the event of non payment of fine, the sole appellant is asked to suffer S.I. for two months. The order and sentences passed in both the appeals have been directed to run concurrently. As the appeals arise out of Barhara P.S. Case No. 55/2000, they have been heard together and are being disposed off by this common judgment.

2. The prosecution case as set out in the Fardbeyan of informant Nirmala Devi, P.W. 4 in the first trial and P.W. 3 in the second trial recorded by S.I. Pramod Kumar Rai of Barhara P.S. on 26.06.2000 at 22.30 hours in the plot of the informant is that her name is Nirmila Devi, wife of late Ganesh Mandal resident of village Godhiyari, P.S. Barhara, District-Purnia and that she is recording her Fardbeyan on Monday 26.06.2000 at 22.30 hours before the Officer Incharge of Barhara P.S. by the side of the dead body of her husband Ganesh Mandal and son Manoj Kumar Mandal. That in the evening of 26.06.2000 around 9.00 P.M., her husband Ganesh Mandal having taken his dinner went out of the house at the entrance for sleeping. Her son Manoj Kumar was taking his dinner. All of a sudden noise was raised at the entrance, she came running and saw her husband surrounded by co-villagers Dinesh Mandal, Ghanshyam Mandal, Lachcho @ Laxman Mandal, Chutaharu Mandal, Palta Paswan and 7-8 unknown accused persons variously armed dragging him towards east on brick soling road. The informant raised alarm, her sons

Manoj Kumar, Binod Kumar and Subodh Kumar came running. Manoj Kumar even attempted to secure release of his father whereafter he was also apprehended and dragged. The accused persons having covered some distance leaving the road on the left hand side moved towards the orchard. The villagers and others began to look for the two victims in the northern side of the block. Meanwhile, 4-5 shots were heard from eastern side. Informant and others also slowly moved in the same direction looking for the miscreants and reached Chulahi outer area on the far eastern end of the village. In the torch light the dead body of two persons was found in the plot of informant; such fact was disclosed to her by someone in the crowd. The informant also reached near the body and found the same to be of her husband and son. In the Fardbeyan, the informant has disclosed that the motive behind the occurrence is that her husband being a leader of the Communist party was always opposing the illegal activities of co-villagers Dinesh Mandal, Lachcho @ Laxman Mandal, Chutaharu Mandal, Palta Paswan and Ghanshyam Mandal who had criminal character and in collusion with the other criminals were involved in felling 'shisham' trees raised on the bank of canal. It is also stated in the Fardbeyan that a case was also lodged by her husband 5-6 years earlier against Dinesh Mandal and Lachcho Mandal for resorting to firing at him and causing injury to him on his left arm in which both the aforesaid Dinesh Mandal and Lachcho Mandal had gone to jail. It is further stated in the Fardbeyan that recently Dinesh

Mandal has been released from jail custody and that along with Palta Paswan was seen in the evening coming and passing through her residence twice or thrice and the present occurrence is because of the aforesaid enmity. In the Fardbeyan, the informant has further stated that she has learnt that another man who was guarding the orchard on the northern side of the block has also been taken away by the miscreants along with her husband and son. In the last paragraph, the informant has claimed that her husband Ganesh Mandal along with her son Manoj Kumar have been forcibly dragged from their residence and thereafter killed by inflicting gun shot injury by the five persons named in the First Informant Report and 7-8 unknown persons. In the last paragraph of the Fardbeyan, the informant has claimed that she having heard the contents of the Fardbeyan and found the same to be true put her right thumb impression over the same. S.I. Pramod Kumar Rai, the Officer Incharge of Barhara P.S. having recorded the Fardbeyan dated 26.06.2000 also registered Barhara P.S. Case No. 55 of 2000 dated 27.06.2000 and took up its investigation. In the light of the contents of the F.I.R. investigation proceeded after performing the inquest of the two deceased, their dead bodies were sent for post mortem which was conducted on 27.06.2000 at 4.15 and 5.00 P.M. respectively. In the light of the contents of the F.I.R., further statement of the informant and the police statement of the prosecution witnesses recorded under Section 161 of the Cr. P.C., chargesheet No. 64 of 2000 was submitted against seven

accused persons including these appellants. Charge against appellants Chander Mandal, Shyam Sunder Mandal, Chutaharu Mandal and Palta Paswan was framed under order dated 05.03.2002 to which Chander Mandal and others pleaded not guilty. Charge framed under order dated 05.03.2002 was further amended under order dated 21.02.2005. Charge in the subsequent Sessions Trial against Lachcho @ Laxman Mandal was framed under order dated 18.04.2012.

3. In support of the charges framed in the earlier trial altogether seven witnesses were examined. P.W. 1 Deo Narayan Mandal is a co-villager of the informant and the accused persons. He has been declared hostile by the prosecution. P.W. 2 Binod Kumar Mandal and P.W. 3 Subodh Kumar Mandal are the two sons of the informant. They have supported the occurrence. P.W. 4 Nirmala Devi is the informant, P.W. 5 Baijnath Mandal is also a co-villager of the informant and the accused persons. He has also been declared hostile. P.W. 6 Dr. Ashok Kumar Pathak is the Medical Officer who conducted post mortem on the dead body of Ganesh Mandal and his son Manoj Kumar Mandal. P.W. 7 Ganesh Kumar Mandal is the Advocate's Clerk, a formal witness who proved the handwriting and signature of Pramod Kumar Rai, Officer Incharge Barhara P.S. over the F.I.R. Out of the aforesaid seven witnesses, P.W. 1 and 5 have not been examined in the subsequent trial as they were declared hostile in the earlier trial. The other five prosecution witnesses have been examined in the

subsequent trial but their seriatim is different as in the subsequent trial P.W. 2 and 3 of the earlier trial have become P.W. 1 and 2, informant is P.W. 3, Doctor P.W. 6 has been examined as P.W. 4 and Advocate Clerk P.W. 7 has been examined as P.W. 5. The defence has also examined one witness D.W. 1 Ramesh Chaurasia, who has claimed in his evidence that in the evening of occurrence itself, the miscreants also abducted him along with the husband and son of the informant but released him after he accepted their dictate to pay extortion money.

4. Before proceeding to consider the submission raised on behalf of the appellants it is necessary to appraise the evidence of the informant and her two sons P.W.'s 2, 3 in the first trial and P.W. 1 and 2 in the subsequent trial. Informant has claimed in her evidence that occurrence has taken place quarter to five years earlier at about 9.30 in the night when she was sitting at her door and her husband deceased Ganesh Mandal after returning from Satsang was sitting at the same place on a chair. In lighted Lantern she identified accused no. 1, Dinesh Mandal, accused no. 3, Lachcho @ Laxman Mandal, accused no. 2, Ghanshyam Mandal, accused no. 4 Chutaharu Mandal and accused no. 5, Palta Paswan from amongst 15-16 men armed with pistol, gun who arrived at her entrance/door. The accused persons assaulted her husband and took him towards east. She raised alarm whereafter her son Manoj Mandal came running and tried to rescue his father but the accused persons also took him away. It

is further stated that after hearing the gun shot she and other residents of the village as also her two other sons went to look for the two victims and the miscreants. Across the canal, on her plot, the dead body of her husband and son Manoj Mandal was found ridden with bullet injuries. The accused persons however were not seen near the dead body. In paragraph 2, the informant has stated that her son Binod Kumar went to the P.S. whereafter Officer Incharge came and recorded her statement which was read over to her and she having found the statement correctly recorded put her thumb impression. Both the bodies were brought to her house and in the morning taken to the P.S. and from P.S. to Purnea for post mortem. In paragraph 3, informant stated her husband was a leader of the Communist party and used to protest against the illegal activities of the accused persons which is the cause behind the present occurrence. Earlier also the accused persons had shot at him because he opposed felling of trees grown on the bank of canal by them. In paragraph 4, informant identified the accused persons present in the dock. In paragraph 5, informant has admitted that her house is situate in the middle of the village surrounded by many houses. In paragraph 6, informant accepted that soling road in front of her house leads to the block campus. In front of the block campus there is orchard. After the orchard there is canal. Her plot is located after the canal. In the block campus, Government employees and policemen reside. In paragraph 7 informant has further stated that no sooner her

husband was being taken away by the miscreants, she raised alarm on which 50-60 villagers collected and there was commotion on her alarm. Her son Manoj Mandal came from inside the house and was gagged and taken away by the miscreants. Another son, Binod Mandal went running to P.S. after he learnt from her that her father has been taken away. In paragraph 8 informant has again stated that no sooner her husband was taken away, alarm was raised and commotion created and that she went to the field after hearing the gun shot. In paragraph 9, informant stated that in her police statement she has said that at the time of occurrence she was sitting on the doorframe and her husband had returned from Satsang and was sitting at the entrance door on a chair. She further stated that she did inform the police that at the time of occurrence there was a lighted lantern also available at the door. In the same paragraph she further stated that in the Fardbeyan as also in her further statement she had named appellant Shyam Sunder Mandal and Chandar Mandal amongst those whom she identified at the place of occurrence. She further stated in paragraph 9 that she had not recorded in her Fardbeyan that her husband after having his dinner had come to the entrance door for sleeping. She further stated in the same paragraph that she did state in Fardbeyan that the accused persons dragged her husband on the soling road and that she had not stated that on alarm being raised her son Manoj Kumar, Binod Kumar and Subodh Kumar came running. In paragraph 10, informant had stated that she

did state in the Fardbeyan that earlier a case was lodged against Dinesh Mandal and Lachcho Mandal for firing shot on her husband. In paragraph 13, informant has admitted that appellant Shyam Sunder Mandal and Chandar Mandal are her neighbours as their houses are 3-4 houses away from her house on western side.

5. P.W.'s 2 and 3, the two sons of the informant deposed on the same lines as that of their mother and have claimed that they identified these appellants and others as the ones who abducted their father and brother and their dead bodies were found in their plot across the canal. P.W. 2 has further stated in his evidence that 3-4 days prior to the occurrence, there was a panchayati in the village in which accused persons had threatened his father of dire consequences. Both the sons have also stated that their father was first dragged and when their brother Manoj came to save him, he was also taken away by the miscreants and their dead body was found in their plot across the canal at a distance of half a kilometer from the house.

6. Autopsy surgeon P.W. 6 has found several injuries on the person of the two deceased wherefrom it is quite clear that the two deceased have been shot dead. From the evidence of doctor P.W. 6 as noted in paragraph 11 of the judgment in the earlier trial, it does not appear that the two deceased suffered any dragging mark which is contrary to the prosecution story that after being abducted the husband of the

informant Ganesh Mandal was dragged by miscreants on a brick soling road for a distance of about half a kilometer.

7. Learned Counsel for the appellant submitted that the story that Ganesh Mandal was dragged by the abductor(s) is perhaps doubtful as no dragging mark was found on the person of Ganesh Mandal by the Autopsy Surgeon. Learned Counsel next submitted that prosecution story as set out in the Fardbayan is clear that Ganesh Mandal having taken his dinner has come out of his house at the entrance to sleep and the sons were having dinner inside the house. The informant was at her door. There is however no whisper in the First Information Report that any lighted lantern was available at the door when Ganesh Mandal came to sleep outside the house and the miscreants 15-16 in number came at the entrance, assaulted Ganesh and then abducted him. Learned counsel further submitted that upon the informant, who was present at the door raising alarm, her sons and co-villagers came and followed the abductors till they reached near the orchard, whereafter the abductors and the two victims disappeared in the cover of darkness. Informant, her son P.W. 3 Subodh Kumar Mandal and the villagers pursued the search in the same direction from which gun shot was heard, found across the canal in the plot of the informant herself, the two dead bodies but their evidence becomes doubtful as perusal of the Fardbayan indicates that besides the husband and the son of the informant, one another person who was guarding the orchard by the side of



the block campus was also abducted by the same miscreants. Investigation Officer of the case has not investigated the claim of the informant about the abduction of the person who was guarding the orchard though he was also abducted by the same accused persons in the same transaction as has been claimed by the informant herself in the Fardbeyan and evidence in Court. The accused person however has examined the other person who was abducted from the orchard in the same transaction as D.W. 1 in the second trial. Perusal of his evidence indicates that he agreed to the dictate of the abductor(s) to pay them extortion money and was released but the two persons who were also abducted along with D.W. 1 declined to accept the dictate of the miscreants and were shot dead. D.W. 1 is however candid to accept that the abductors had covered their face and he had no opportunity to see and identify them. Learned counsel further submitted that Investigating Officer of the case has not been examined in the trial to explain as to why part of the prosecution story that the man who was guarding the mango orchard in the village and was abducted along with the two deceased in the same transaction was not interrogated to confirm the identity of the abductors and their accomplice including the appellants. In this connection counsel further submitted that co-villager Lakra Mandal at whose house the accused persons were seen having meal just before the occurrence in the same evening, as has been deposed by P.W. 2, son of informant, neither being interrogated



and made accused nor examined as a witness, there does not appear any independent evidence available on record to suggest that the appellants were amongst the miscreants. According to learned counsel, failure to investigate the aforesaid two aspects of the prosecution case raised serious doubt about its correctness and the identity of the accused persons who committed the present crime. Enmity with Lachcho @ Laxman Mandal being admitted by the prosecution party may be an additional cause for his implication in the present case. In any case, appellant Chandar Mandal and Shyam Sunder Mandal, though co-villagers having their houses just 3-4 houses away from the house of the informant yet not named in the Fardbeyan should in any case be acquitted.

8. Learned counsel for the State though supported the impugned judgment of conviction and sentence but conceded the position that there has been departure in the prosecution case as set out in the Fardbeyan and the one deposed by the prosecution witnesses in Court. He however pointed out that Fardbeyan having been recorded within one and a half hours of the occurrence, the complicity of the accused persons named therein may not be doubted for the failure of the I.O. not to come to the witness box to explain his inability to investigate the story of abduction of the person who was guarding the orchard and his evidence that miscreants who abducted him had covered their face and he could not identify him. He also submitted that Lakra



Mandal, a co-villager of the informant at whose house P.W. 2 had seen the appellant and others taking meal just before the occurrence may have been involved in the crime but as he was not identified amongst the accused persons at the place of occurrence, failure of the I.O. to interrogate him and book him as an accused in the case may not persuade this Court to doubt the evidence of the informant and her two sons about the complicity of the appellants as the abductor of the two victims.

9. Having considered the prosecution case as set out in the Fardbeyan and narrated during evidence, it is quite evident that there is departure in the manner of occurrence as stated in the Fardbeyan and deposed in Court. In the Fardbeyan, the informant has categorically stated that she was at her door/entrance, her husband after having taken his dinner had come out of the house to sleep while her sons were having their dinner inside the house, the miscreants including the appellants Lachcho @ Laxman Mandal, Chutaharu Mandal, Palta Paswan, two others named in the Fardbeyan came along with 7-8 unknown to her house variously armed, forcibly dragged her husband on the brick soling road and went towards east. Further, the informant raised alarm whereafter her three sons came running, one of her son Manoj Kumar attempted to rescue his father but was also forcibly dragged by the miscreants. The miscreants after covering some distance left the road and went towards the orchard. Informant and co-villagers followed the miscreants and looked for them in the



orchard situate on the northern side of the block campus. Meanwhile, 4-5 shots were heard from eastern side, informant and the co-villagers went in the same direction from which gun shot was heard across the canal. The dead body of her husband and son Manoj Kumar was found in the plot of the informant across the canal. In the Fardbeyan, informant has not whispered about the lighted lantern being available outside the house. In Court, informant and her two sons have changed their version as it is categorically stated by the three in their deposition that just before the occurrence Ganesh Mandal had come back from the Satsang and was sitting on a chair outside the house where lighted lantern was also available and she identified the three appellants and others from amongst the 15-16 miscreants in the lantern light. The miscreants assaulted her husband and took him towards east. She raised alarm whereafter her son Manoj came and tried to rescue his father but the miscreants having gagged his mouth also took him away. She further asserted in her evidence that on her alarm villagers came and after gun shot was heard, informant and the villagers also went to search the victim. It would thus appear that there is departure in the prosecution story about the timing when the informant, her one son and the villagers went in search of the victim and the miscreants. Aforesaid departure in the prosecution case as narrated in the Fardbeyan and during evidence in Court creates doubt about their assertion that they identified the accused persons at the time of abduction of the

victims. In the aforesaid background, failure of the prosecution to examine the I.O. to explain his inability to investigate the orchard guard, who was also abducted in the same transaction as also Lakra Mandal in whose house the accused persons were seen by one of the sons of the informant taking meal just prior to the occurrence is indicative of the fact that the prosecution has not made wholehearted effort to unfold the manner of occurrence.

10. In light of the aforesaid discussions, the appellants deserve grant of benefit of doubt. Accordingly, the impugned judgments and orders of sentence are set aside and the appeals succeed. The appellants Chander Mandal, Shyam Sunder Mandal, Palta Paswan and Chutaharu Mandal are on bail. They are discharged from the liability of their respective bail bonds. Appellant Lachcho @ Laxman Mandal who is in jail custody should be released forthwith, if not wanted in any other case.

(V.N. Sinha, J.)

(Ahsanuddin Amanullah, J.)

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