

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.788 of 2014

(Against the Judgment/Order dated 28/29.08.2014 passed in Sessions Trial No.360/A/2011, arising out of Ramnagar P.S. Case No.279 of 2009, by the Ad hoc Additional District and Sessions Judge-I, Bagaha, District-West Champaran).

1. Afzal Mian, son of Mustkim Mian, resident of village-Basantpur, P.S. Mainatand, District-West Champaran.
2. Harun Mian, son of Nirwan Mian, resident of village-Pakrihar, P.S. Sathi, District-West Champaran.

.... .... Appellant/s

Versus

The State of Bihar

.... .... Respondent/s

with

Criminal Appeal (DB) No. 839 of 2014

(Against the Judgment/Order dated 28/29.08.2014 passed in Sessions Trial No.360/2011, arising out of Ramnagar P.S. Case No.279 of 2009, by the Ad hoc Additional District and Sessions Judge-I, Bagaha, District-West Champaran).

Islam Mian, son of Nizamuddin Mian, resident of village-Sohsa Chhaughariya, P.S.-Ramnagar, District-West Champaran.

.... .... Appellant/s

Versus

The State of Bihar

.... .... Respondent/s

Appearance :

(In CR. APP (DB) No. 788 of 2014):

For the Appellant/s : M/s. S.N.P. Sinha, Senior Advocate, J.N. Sinha & Rohit Kumar, Advocates.

For the Respondent/s : Mr. Ashwini Kumar Sinha, A.P.P.

(In CR. APP (DB) No. 839 of 2014):

For the Appellant/s : M/s. S.N.P. Sinha, Senior Advocate, J.N. Sinha & Rohit Kumar, Advocates.

For the Respondent/s : Dr. Mayanand Jha, A.P.P.

CORAM: HONOURABLE MR. JUSTICE V.N. SINHA

and

HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA

ORAL JUDGMENT

**(Per: HONOURABLE MR. JUSTICE V.N. SINHA)**  
**Date: 06-01-2015**

-----

Heard learned counsel for the appellants and the counsel for the State, learned A.P.P. Sri Ashwini Kumar Sinha in Criminal Appeal (DB) No.788 of 2014 and Dr. Mayanand Jha in Criminal Appeal (DB) No.839 of 2014. Perused the lower court records and with consent of the parties proceed to dispose of the two Appeals.

2. Criminal Appeal (DB) No.788 of 2014 is directed against the Judgment/Order dated 28/29.08.2014 passed by Ad hoc Additional District and Sessions Judge-I, Bagaha, District-West Champaran in Sessions Trial No.360/A/2011 whereunder the two appellants in the said appeal have been convicted for the offences under Sections 302/34 of the Penal Code and sentenced to undergo R.I. for life as also to pay fine of Rs.10,000/- each. Both these appellants have also been convicted under Section 27 of the Arms Act with a direction to undergo R.I. for three years with further direction to pay fine of Rs.3000/- each, in default of payment of fine to suffer imprisonment for further six months. The other Criminal Appeal (DB) No.839 of 2014 is directed against the Judgment/Order dated 28/29.08.2014 passed by the same learned court in Sessions Trial No.360/2011, whereunder sole appellant has been convicted for the offences under Sections 302/34 of the Penal Code and 27 of the Arms



Act and sentenced to undergo R.I. for life for the offences under Sections 302/34 of the Penal Code with a further direction to pay fine of Rs.10,000/- and to undergo R.I. for three years under Section 27 of the Arms Act with fine of Rs.1000/-, in default of payment of fine to suffer further R.I. for six months. The sentences passed in both the Judgments/Orders have been directed to run concurrently. Both the Sessions Trials/Criminal Appeals are arising out of Ramnagar P.S. Case No.279 of 2009.

**3.** Prosecution case as set out in the fardbeyan of Gyasuddin Ansari, the deceased, is that he was at his residence on 11.11.2009 around 07.30 P.M. and after having taken meal was sitting at the entrance of his house. While he was so sitting, Harun Mian and Islam Mian alongwith one unknown came to his residence armed with gun and resorted to firing causing injury on his waist, left hand and fled away. The firing was resorted to by the aforesaid two named and one unknown because of land dispute. Gyasuddin having suffered gunshot injury was taken to Ramnagar Primary Health Centre where he recorded his fardbeyan before Ram Padarath Jha, A.S.I. Ramnagar P.S. (not examined). The doctor who attended Gyasuddin Ansari at Primary Health Centre referred him for better treatment to the hospital at Bettiah where he succumbed to the injury. The post-mortem of Gyasuddin Ansari was performed by Dr. Nikhil Kumar at Bettiah on



12.11.2009 at 10.05 A.M. vide post-mortem report (Ext.3) which indicates that he died on account of gunshot injury. After the death of Gyasuddin Ansari Section 302 of the Penal Code was added to the F.I.R., as the case was earlier registered for the offences under Sections 307/34 of the Penal Code and 27 of the Arms Act. The Officer Incharge Ramnagar P.S., Vinay Kumar Singh, conducted the investigation and submitted first chargesheet dated 01.02.2010 against Harun Mian. Later, Krishnanand Jha submitted supplementary chargesheet on 31.05.2011 against Islam Mian and Afzal Mian, who was not even named in the First Information Report. In the light of the chargesheet cognizance was taken and after supply of the police paper case was committed to the court of sessions. Charge against Islam Mian was framed under order dated 23.05.2011 in Sessions Trial No.360 of 2011 and charge against Afzal Mian and Harun Mian was framed under order dated 26.05.2011 in Sessions Trial No.360/A/2011 to which Islam Mian, Afzal Mian, Harun Mian pleaded not guilty and claimed to be tried.

**4.** In support of the prosecution case altogether 11 witnesses have been examined in both the trials, however, their serial number(s) are different in both the trial. The 11 prosecution witnesses are named below.

1. Arshad Mian.

2. Abdul Samad Ansari.

3. Aurangzeb Ansari.

4. Jamadar Ansari

5. Abid Ansari.

6. Yunus Ansari.

7. Baidulla Ansari.

8. Hajra Khatoon.

9. Krishna Nand Jha.

10. Sudama Choudhary.

11. Wakil Ahmad.

Out of the aforesaid 11 prosecution witnesses, prosecution witness Jamadar Ansari, Abid Ansari and Baidulla Ansari are villagers of the deceased, prosecution witness Aurangzeb Ansari is the brother of the deceased, prosecution witnesses, Abdul Samad Ansari, Yunus Ansari are the sons of the deceased, prosecution witness Arshad Mian is the Samadhi of the deceased, prosecution witness Hajra Khatoon is the wife of the deceased. Prosecution witness Krishna Nand Jha is the Police Officer, who formally submitted supplementary chargesheet and proved the same. Sudama Choudhary, Advocate's clerk, is a formal witness and has proved the signature of Ram Padarath Jha, the scribe of fardbeyan, prosecution witness Wakil Ahmad is a private teacher, who proved the post-mortem report (Ext.3) prepared by Dr.

Nikhil Kumar.

5. The villagers and the family members including brother, son and wife of the deceased have supported the prosecution case only to the extent that Gyasuddin Ansari was killed on account of having suffered gunshot injury but have not deposed that it was the appellants who resorted to firing killing Gyasuddin Ansari and committed the occurrence. Presence of Arshad Mian, who is the Samadhi of the deceased and resident of 22 kilometers away from the P.O. is itself doubtful at the P.O. in the evening. In any case he has also not identified the appellants as the assailant of the deceased. In the facts and circumstances of the case it is held that none of the eye witnesses have supported the prosecution case.

6. The fardbeyan and the post-mortem report having been proved by formal witnesses, Advocate's Clerk and private teacher and not by the scribe Ram Padarath Jha and the autopsy surgeon cannot be relied upon in evidence.

7. The trial court, however, has proceeded to convict the three appellants in the light of the admission made by the prosecution witness, Abdul Samad Ansari, the son of the deceased that he had filed the protest petition in the case and the contents of the protest petition about the factum of the occurrence has been corroborated by the prosecution witnesses, i.e., the family members of the deceased. The

contents of the protest petition cannot be read into evidence as perusal of the evidence of the prosecution witnesses indicates that they have not supported the prosecution story that appellants Harun Mian and Afzal Mian have resorted to firing alongwith one unknown in the evening of the occurrence. There is no material on record at all on the basis of which the conviction of the aforesaid three appellants can be maintained.

8. In the circumstances, we have no option but to set aside both the impugned Judgments/Orders of sentence, which is, accordingly, set aside and these appeals are allowed. All the three appellants above named are directed to be released forthwith, if not wanted in any other case.

**(V.N. Sinha, J)**

**(Rajendra Kumar Mishra, J)**

**P.S./-N.A.F.R.**

|   |  |   |  |
|---|--|---|--|
| U |  | T |  |
|---|--|---|--|