

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No. 363 of 1993

WITH

Criminal Appeal (DB) No. 382 of 1993

WITH

Criminal Appeal (DB) No. 455 of 1993

WITH

Criminal Appeal (DB) No. 400 of 1994

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(AGAINST THE JUDGMENT OF CONVICTION DATED 05.08.1993 AND ORDER OF SENTENCE, DATED 07.08.1993, PASSED BY SHRI DHARNIDHAR JHA, 2nd ADDITIONAL SESSIONS JUDGE, WEST CHAMPARAN, BETTIAH, IN SESSIONS TRIAL NO. 126 OF 1992, ARISING OUT OF SIKTA (KANGALI) POLICE STATION CASE NO.85 OF 1991.)

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1. Bharat Ram son of Raghubir Ram
2. Anirudh Ram son of Bharat Ram
3. Bazari Ram son of Bircha Ram
4. Abaiju Mian son of Idrish Mian
5. Safayat Mian son of Idrish Mian

All are resident of Village-Bhogari, P.S.-Majhauria, District-West Champaran.

6. Jagdish Ram son of Nanhak Ram
7. Sudhan Majhi son of Jiyan Manjhi
8. Sheodhari Ram son of Rampat Ram

All are resident of Village-Mangalpur, P.S.-Sikta, District-West Champaran.

.... **Appellants [In Cr. Appeal (DB) No. 363 of 1993]**

AND

Yogendra Ram son of Kailash Ram, resident of Village- Mangalpur, P.S.-Sikta, District-West Champaran.

.... **Appellant [In Cr. Appeal (DB) No.382 of 1993]**

AND

Phulman Miyan, son of Idrish Miyan, resident of Village-Bhogari, P.S.-Majhauria, District-Bettiah.

.... **Appellant [In Cr. Appeal (DB) No.455 of 1993]**

AND

Phulman Miyan, son of Idrish Miyan, resident of Village-Bhogari, P.S.-Majhauria, District-Bettiah.

.... **Appellant [In Cr. Appeal (DB) No.400 of 1994]**

Versus

The State of Bihar

.... Respondent **(In all the appeals)**

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Appearance :

(In Cr. Appeal No. 363 of 1993)

For the Appellants : Mr. Bashishtha Narayan Mishra, Advocate.
Mr. S.N. Rai, Advocate.
Mr. B. K. Mishra, Advocate.
For the Respondent : Mr. Ajay Mishra, A.P.P.

(In Cr. Appeal No. 363 of 1993)

For the Appellant : None
For the Respondent : Mr. S. N. Prasad, A.P.P.

Mrs. Fauzia Sakil, Advocate, Amicus Curiae

(In Cr. Appeal No. 455 of 1993)

For the Appellant : None
For the Respondent : Mr. Ajay Mishra, A.P.P.

Mr. Amish Kumar, Advocate, Amicus Curiae

(In Cr. Appeal No. 400 of 1994)

For the Appellant : None
For the Respondent : Mr. Ajay Mishra, A.P.P.

Mr. Praveen Kumar, Advocate, Amicus Curiae

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**CORAM: HONOURABLE MR. JUSTICE I. A. ANSARI
AND
HONOURABLE MR. JUSTICE VIKASH JAIN**

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE I. A. ANSARI)

Date: 22-06-2015

Under challenge, in the present appeals, are the judgment, dated 05.08.1993, passed, in Sessions Trial No. 126 of 1992, by learned 2nd Additional Sessions Judge, West Champaran, Bettiah, and order, dated 07.08.1993, whereby various sentences have been passed against the accused-appellants.

2. By the impugned judgment, learned trial Court has convicted all the accused-appellants, namely, Phulman Mian, Yogendra Ram, Sheodhari Ram, Bajri Ram, Bharat Ram, Safayat Mian, Anirudh Ram, Abaiju Mian, Jagdish Ram and Sudan Manjhi, under Section 302 read with Section 149 of the Indian Penal Code. The learned trial Court has



convicted the accused-appellant, Yogendra Ram, under Section 302 read with Section 109 of the Indian Penal Code. The learned trial Court has further convicted accused-appellant, Phulman Mian, under Section 302 of the Indian Penal Code and Section 27 of the Arms Act, 1959. Following their conviction under Section 302 read with Section 149 of the Indian Penal Code, all the accused-appellants, namely, Phulman Mian, Yogendra Ram, Sheodhari Ram, Bajri Ram, Bharat Ram, Safayat Mian, Anirudh Ram, Abaiju Mian, Jagdish Ram and Sudan Manjhi, have been sentenced to undergo imprisonment for life. Following his conviction under Section 302 read with Section 109 of the Indian Penal Code, accused-appellant, Yogendra Ram, has been sentenced to undergo imprisonment for life. The accused-appellant, Phulman Mian, having been convicted under Section 302 of the Indian Penal Code and 27 of the Arms Act, 1959, stands sentenced to undergo imprisonment for life and rigorous imprisonment for a period of seven years, respectively. All sentences having been directed to run concurrently.

3. The case of the prosecution, as unfolded by the First Information Report, may, in brief, be described thus:

(i) While the informant, Abdul Mannan (PW 4), was present, along with his father, Rahmat Ali (since deceased), at an agricultural field, situated in the west of his village *Sareh*, 50-60 persons, who included the accused-



appellants, came armed with *lathis*, *bhala* (spear), country-made gun, and started driving away the buffaloes, which had been left to graze by some herd-boys. On witnessing the accused persons and their associates trying to take away the buffaloes, the herd-boys objected. Hearing the *hulla*, which was raised by the herd-boys, Rahmat Ali interfered by telling the accused and their associates that their (accused persons') dispute was with Ojhaji, whose land the accused had been occupying and that dispute had nothing to do with the said buffaloes. Enraged by the intervention of Rahmat Ali, accused Yogendra Ram and Mahesh Ram exhorted their associates to kill Rahmat Ali by saying that Rahmat Ali was a supporter of Ojhaji. On being so exhorted, accused Phulman Mian opened fire from his country-made pistol. The bullet did not hit Rahmat Ali, but as Rahmat Ali was empty handed, he turned to run away. However, when Rahmat Ali turned to run away, a bullet fired by Phulman Mian hit Rahmat Ali on his scapular region and Rahmat Ali fell down. Out of fear, the informant started running away, but the accused persons fired at the informant too. However, the informant was not hit by any bullet. On *hulla* raised by the informant, his co-villagers started coming and the accused persons took their heels.

(ii) On receiving the information, on 27.12.1991, at 3 AM, at Kangali Police Station, of firing having taken place at Village Gamharia Sareh, in which one person



had been killed, Sri Krishna Paswan (PW 11), an Assistant Sub Inspector of Police, reached village Gamharia and, on coming to know that the deceased was Rahmat Ali, PW 11 went to the house of Rahmat Ali and recorded there the statement of Rahmat Ali's son, Abdul Mannan (PW 4) as his *fardbeyan*. Treating the said *fardbeyan* as the First Information Report, Sikta (Kangali) Police Station Case No. 85 of 1991 was registered, under Sections 147/148/149/302/307 of the Indian Penal Code and Section 27 of the Arms Act, 1959, against 12 named accused persons, namely, Yogendra Ram, Mahesh Ram, Sheodhari Ram, Jagdish Ram, Sudan Manjhi, Phulman Mian, Abaiju Mian, Safayat Mian, Bharat Ram, Anirudh Ram, Briksha Ram and Bajri Ram and 47-48 unknown persons.

(iii) During investigation, inquest was held over Rahmat Ali's dead body, which was also subjected to *post mortem* examination. On completion of investigation, police laid *charge sheet*, under Sections 147/148/149/302/307 of the Indian Penal Code and Section 27 of the Arms Act, 1959, against 11 (eleven) accused persons, namely, Yogendra Ram, Jagdish Ram, Sheodhari Ram, Sudan Manjhi, Phulman Mian, Abaiju Mian, Safayat Mian, Anirudh Ram, Bajri Ram and Bharat Ram as well as against the absconding accused, namely, Briksha Ram.

4. At the trial, a charge, under Section 302 read with Section 149 of the Indian Penal Code, was framed against



accused, namely, Yogendra Ram, Jagdish Ram, Sheodhari Ram, Sudan Manjhi, Phulman Mian, Abaiju Mian, Anirudh Ram, Bajri Ram, Bharat Ram and Safayat Mian. A substantive charge, under Section 302 read with Section 109 of the Indian Penal Code, too, was framed against accused Yogendra Ram. A charge was further framed, under Section 302 of the Indian Penal Code and Section 27 of the Arms Act, 1959, against accused Phulman Mian. All the accused-appellants pleaded not guilty to their respective charges.

5. In support of their case, prosecution examined altogether 13 (thirteen) witnesses including the doctor, who had, admittedly, conducted the *post mortem* examination. The accused were, then, examined under Section 313 (1)(b) of the Code of Criminal Procedure, wherein the accused denied that they had committed the offences, which were alleged to have been committed by them, the case of the defence being that of denial. No evidence was adduced by the defence.

6. Having, however, arrived at the finding that accused aforementioned had been proved guilty of the offences charges with, the learned trial Court convicted them as indicated hereinbefore. Following their conviction, sentences have been passed against the accused persons as mentioned above.

7. Aggrieved by their conviction and the

sentences passed against them, all the accused, as convicted persons, have preferred these two appeals.

8. Before we proceed further, we may point out that so far as Cr. Appeal (DB) No. 455 of 1993 and Cr. Appeal (DB) No. 400 of 1994 are concerned, both these appeals have been filed by one and the same appellant, namely, Phulman Mian.

9. All these four appeals having, thus, arisen out of the impugned judgment of conviction, dated 05.08.1993, and the order of sentence, dated 07.08.1993, these appeals are being disposed of by this common judgment and order.

10. We have heard Mr. Bashishtha Narayan Mishra, learned Counsel, appearing on behalf of the appellants, in Cr. Appeal (DB) No.363 of 1993, Mrs. Fauzia Shakil, learned counsel, appearing as *amicus curiae* in Cr. Appeal (DB) No.382 of 1993, Mr. Amish Kumar, learned counsel, appearing as *amicus curiae* in Cr. Appeal (DB) No.455 of 1993 and Mr. Praveen Kumar, learned counsel, appearing as *amicus curiae* in Cr. Appeal (DB) No.400 of 1994. We have heard also Mr. Ajay Mishra, and Mr. S. N. Prasad, learned Additional Public Prosecutor, appearing on behalf of the State.

11. While considering the present appeals, it may be noted that though Abdul Mannan's statement, recorded by PW 11, has been treated as First Information Report of the case (Exhibit-3), the fact remains that the



information, with regard to the fact that firing had taken place, on 26.12.1991, and the fact that one person has been killed in the firing, was received, on 27.12.1991, at 3 AM, at Kangali Police Station. On the basis of the information so received, PW 11 came to the village concerned to find out as to who had been killed and who was the one, who had killed. The investigation, thus, has started on the basis of the information which had been received by PW 11 in the manner as indicated above and it was during the course of this investigation that Abdul Manna's statement was recorded as his *fardbeyan*. Though this statement has been treated as the First Information Report, Abdul Manna's said statement was nothing but a statement recorded under Section 161 of the Code of Criminal Procedure.

12. Bearing in mind what has been indicated above, when we proceed further and come to the evidence of Abdul Mannan (PW 4), we notice that, according to his evidence, on the day of occurrence, at 04 O'clock in the evening, he went with his father to work at their field of *masur dal* (lentil) and, while so working there, they noticed that some buffaloes had been left to graze by herd-boys and, at that time, 40-50 persons, including the accused, came variously armed and, having surrounded the buffaloes, tried to take away the buffaloes. On seeing the buffaloes being so taken away, the herd-boys started raising *hulla* and Rahmat Mian, father of PW



4, went there and told the accused and their associates not to take away the buffaloes. Reacting to the intervention so made by Rahmat Mian, the accused and their associates, particularly, accused Yogendra Ram and Dinesh Ram asked their associates to kill Rahmat Mian, making a remarks that Rahmat Mian was a supporter of Ojhaji. On being so exhorted, accused Phulman Mian, according to the evidence of PW 4, opened fire from his country-made pistol, but the bullet did not hit Rahmat Mian and as Rahmat Mian was empty handed, he turned back to run away, but one bullet, shot by accused Phulman Mian, hit the left shoulder of Rahmat Mian, who fell down, and though accused Phulman Mian fired upon PW 4, too, PW 4, somehow, escaped and, as the co-villagers of Rahmat Mian started gathering, accused persons fled away.

13. Broadly in tune with the evidence of PW 4 is the evidence of PW 1, PW 2, PW 3 and PW 6.

14. The question, which, now, falls for consideration, is : whether the evidence given by PW 4 and also by PW 1, PW 2, PW 3 and PW 6 could have been safely relied upon?

15. Our quest for the answer to the above question brings us to the evidence of Dr. G. P. Yadav (PW 10), who had, admittedly, on 28.12.1991, at 11 AM, held *post mortem* examination on the dead body of Rahmat Aii @ Rahmat Mian and found following injuries:

"One lacerated wound with inverted margin with charring of skin around the wound 1/4" in diameter just below the left clavicle chest cavity deep (wound of entrance).

Wound of exit : lacerated 2ound 1 1/2" 2 1" x chest cavity deep upper part of left scapular region.

On dissection : The left lung (upper lobe) was found extensively lacerated. There were fracture of left clavicle and 1st lobe cliffs and also the left scapula ws fractured into pieces. The wound of entrance and exit were communicative to each other. There were blood and blood clots in left chest cavity. The above injuries are ante mortem in nature and were caused by firearms."

16. It is in the evidence of doctor (PW 10) that the injuries were *ante mortem* in nature, the same having been caused by some firearm. The doctor (PW 10) has opined that the injuries were sufficient to cause death in the ordinary course of nature.

17. From a close scrutiny of the finding of the doctor, what clearly transpires is that the wound of entry was on the front side of the chest below the clavicle region and the exit was on the left scapular region. This shows that the said deceased was shot from the front; whereas the evidence of PW 4, son of the deceased, and the other witnesses, namely, PW 1, PW 2, PW 3 and PW 6, is to the effect that the bullet had hit

Rahmat Ali, when Rahmat Ali had turned, to run away. If this description, given by the eyewitnesses, including PW 4 were true, then, the bullet would have hit at the back of the chest of the said deceased. This apart, the evidence on record eloquently speaks that the bullet was fired not from a close range, but from some distance.

18. Coupled with the above, it is also of immense importance to note that the *post mortem* examination reveals charring of the skin around the entry wound meaning thereby that the firearm was used very close to the body of the deceased, which, again, is not the case inasmuch as the said deceased was alleged to had been shot, while he was trying to run away and was at some distance from the said deceased.

19. What logically follows from the above discussion is that the ocular evidence on record is belied by the medical evidence. Though medical evidence may not always be the touchstone for testing the veracity of ocular evidence, the fact remains that in the case at hand, there is nothing in the evidence on record enabling this Court to hold that notwithstanding the fact that the medical evidence on record belies the ocular description of the occurrence, the ocular evidence need not to be implicitly relied upon.

20. At any rate, therefore, in the light of the evidence on record and the law relevant thereto, the accused-appellants deserved to be accorded, at least, benefit of doubt.

21. In the result and for the forgoing reasons, we allow these appeals. The impugned conviction of the accused-appellants and the sentences passed against them by the judgment and order, under appeal, are hereby set aside. The accused-appellants are held not guilty of the offences, which they stand convicted of, and they are hereby acquitted of the same under benefit of doubt.

22. Since all the accused-appellants are on bail, their bail bonds are hereby cancelled and their sureties shall accordingly stand discharged.

23. Registry shall, forthwith, send a copy of this judgment and order to the learned trial Court along with the Lower Court Records.

(I. A. Ansari, J.)

(Vikash Jain, J.)

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