

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.262 of 2009

Arising out of PS.Case No.-166 Year-2006 Thana-Sanhaula District- BHAGALPUR

Lalan Mandal, Son of Sri Ram Swarup Mandal, Resident of Village Sakhua, P.S.
Sanhaula, District Bhagalpur.

.... Appellant

Versus

The State of Bihar

.... Respondent

with

Criminal Appeal (DB) No. 229 of 2009

Arising out of PS.Case No.-166 Year-2006 Thana-Sanhaula District- BHAGALPUR

Jamun Mandal, Son of Late Anirudh Mandal, Resident of Village Sakhua, P.S.
Sanhaula, District Bhagalpur.

.... Appellant

Versus

The State of Bihar

.... Respondent

Appearance :

For the Appellants : Shri Rana Pratap Singh, Sr. Advocate
Shri Aruni Kumar, Advocate
Shri Indeshwari Prasad Mandal, Advocate
For the State : Shri D.K. Sinha, APP
Sushri Shashi Bala Verma, APP
For the Informant : Dr. Bidu Nandan, Advocate

CORAM: HONOURABLE SHRI JUSTICE DHARNIDHAR JHA

and

HONOURABLE SHRI JUSTICE AMARESH KUMAR LAL

ORAL JUDGMENT

(Per: HONOURABLE SHRI JUSTICE DHARNIDHAR JHA)

Date: 06-04-2015

The two appellants Lalan Mandal and Jamun Mandal were put on trial by the learned Presiding Officer of Fast Track Court No. V, Bhagalpur in Sessions Trial No. 708 of 2007/Trial No. 113 of 2007 after being indicted of committing offences under Sections 302/34 of the Indian Penal Code and Section 27 of the Arms Act and by judgment dated 21.02.2009,



they were held guilty of committing the offences they had been charged with. The appellants were heard on sentence on 24.02.2009 and were directed to suffer rigorous imprisonment for life as also to pay fine of Rs. 10,000/- else to suffer rigorous imprisonment for six months each after being convicted of the offence under Sections 302/34 of the Indian Penal Code. For having been held guilty of committing offence under Section 27 of the Arms Act, the two appellants were directed to suffer rigorous imprisonment for three years. The sentences passed upon the appellants were directed to run concurrently. This is how the two appellants have filed the two appeals to challenge the correctness of the finding of their guilty and appropriateness of the order of sentence passed upon each of them. We have heard the two appeals together and we are disposing them of by this common judgment.

2. Deceased Neelam Devi was the wife of Sikandar Mandal (P.W.5). She was residing prior to 12.12.2006 with the informant (P.W.5) at Nasrat Khani under Lalmatia (Nathnagar) police station within the district of Bhagalpur. It was stated by the informant that appellant Jamun Mandal came there and pressed upon the deceased to accompany him to village Sakhua within Sanhaura police station so as to getting the harvested paddy crop



thrashed. There was initially some anxiety shown by the deceased and the informant but ultimately the informant allowed the deceased to go to village Sakhua for getting the paddy thrashed and accordingly, the deceased caught the train in Nathnagar and travelled up to Ghogha railway station from where she went to village Sakhua. While leaving P.W.5, the deceased had stated to him that after she had got the harvested paddy crop thrashed, she would come back in a day or two.

3. It was stated by the informant that on 12.12.2006 in the afternoon he was informed that someone had given him a ring on the telephone of one Sahdeo Singh that his wife had been murdered at village Sakhua and that her dead body was lying in front of the house. The telephonic message also communicated to the deceased that it was appellant Lalan Mandal who had committed the murder of his wife in active connivance and co-operation of appellant Jamun Mandal and that Neelam, the wife of P.W.5 had been shot dead by appellant Lalan Mandal. While getting the informant through the telephone, the informant wanted to know the name of the man who had given the call but he disconnected the phone and, as such, the informant could not know who the person was.

4. The informant stated that as soon as he had got



the information, he taking with him Dhaneshwar Mandal (not examined), Anita Devi (not examined), Ganga Mandal (P.W.7), Basudeo Mandal (not examined), Triveni Mandal (not examined) started for village Sakhua from Nasrat Khani to find that the dead body of his wife was lying in front of his house and that the lady Neelam had been shot into her head and chest as there were bleeding injuries at both the sides. The informant attempted to gather information about the manner in which and the person by whom the offence had been committed and it was during that course that Gopal Thakur (P.W.2), one of his neighbours, had pointed out to him that he had seen the murder being committed and further stated that it was appellant Lalan Mandal, who had dragged the lady by lock of her hairs up to the place which was in front of the house of P.W.5 and had thereafter shot the lady dead with the aid and connivance of appellant Jamun Mandal.

5. As regards the reason for committing the murder of Neelam Devi, it was stated that there were 12-14 Bighas of ancestral land of the informant which the present appellant Lalan Mandal attempted to grab and in order to putting pressure upon the informant and his wife, he had committed the murder of Saraswati Devi, the mother of the informant and had himself lodged a criminal case implicating deceased Neelam Devi and one Anita

Devi who happened to be the wife of the younger brother of P.W.5. The informant stated that the murder was committed in broad day light and had been seen by the witnesses.

6. P.W.8, S.I. Banshidhar Mandal was the Officer-in-Charge of Sanhaura police station on 12.12.2006 and he recorded the *fardbeyan* of the informant at 4.50 p.m. on that day. It was stated by P.W.8 that on the basis of the *fardbeyan* the formal First Information Report was drawn up by S.I. Shri Ram Singh. The formal First Information Report has been marked Ext.7/3. P.W.8 had taken up the investigation himself and he held inquest upon the dead body of Neelam Devi and prepared the inquest report, the photo of which document was tendered in evidence. It appears that the court did not admit the document and had only marked it for identification. The dead body of Neelam Devi was dispatched to Jawahar Lal Nehru Medical College, Bhagalpur for post mortem. The Investigating Officer recorded the further statement of the informant and thereafter inspected the place of occurrence which was the road which was running from north to south in village Sakhua and it was the western flank of the road where the dead body of Neelam Devi was lying. Contiguous west of the road was the house of the informant and the road was 10-12 feet in width. The house of the accused persons was situated at a



distance of about 1000 meter from the place where the dead body was found and the house of Gopal Thakur was also situated south of the place where the dead body was found. The Investigating Officer recorded the statements of witnesses, like, Gopal Thakur (P.W.2) and others also made attempt to arrest the accused persons and after completing the investigation and having procured a copy of the First Information Report sent the two accused persons for their trial.

7. The defence of the appellants was multifold. One of the limb is that the informant Sikandar Mandal had many marriages and either he killed the wives or that died and it was the fourth time that he had married Neelam Devi and for any particular reason he again killed Neelam Devi and implicated his enemies, like, Lalan Mandal and Jamun Mandal. This defence appears in the evidence of P.W.7 in paragraph-15. Charittar Mandal (P.W.3) who happened to be the brother of the deceased in paragraph-26 of his evidence when the defence suggested to him that his sister was carrying multiple relationship with other men as the informant Sikandar Mandal was an incapable person on account of some handicap and Neelam Devi was murdered on account of carrying multiple relationship with different persons by any of those persons who was having relationship with her.

8. In order to bring the charge home, the prosecution examined as many as eight witnesses out of whom Mahendra Ram (P.W.4) does not appear to be an eye witness to the occurrence rather he claims to have seen the accused persons running away from the scene of occurrence when he ran towards it and found that the deceased had gun shot injuries. Charittar Mandal (P.W.3) was brother of the deceased and he had given an eye witness account to it.

9. Bipin Ram (P.W.1) was yet another eye witness to the occurrence. Gopal Thakur (P.W.2) was the most important witness for the prosecution as it was he who had narrated the manner of occurrence to the informant as well as the man who had murdered his wife Neelam Devi. Sikandar Mandal (P.W.5) was the informant of the case who was admittedly not a eye witness to the occurrence and who had lodged the report as per information received by him from P.W.2. Yogesh Prasad Saha (P.W.6) had held post-mortem examination on the dead body of Neelam Devi and had issued the post-mortem examination report (Ext.6). Ganga Mandal (P.W.7) was the father of the deceased and had given hearsay evidence and had also stated that on reaching at the place of occurrence, he found the dead body of his daughter lying at the place of occurrence. We have already noted that P.W.8

Banshidhar Mandal was the Investigating Officer of the case.

10. Four D.Ws. were also examined by the defence to show their innocence. They stated that they were present at the scene of occurrence and 4-5 unknown criminals came there and shot Neelam Devi dead and the appellants had not committed the offence.

11. Shri Rana Pratap Singh, the learned senior counsel appearing on behalf of the appellants has submitted that the motive for the occurrence was not proved and the solitary evidence of P.W.2 was not fit to be relied upon for sustaining the conviction of the appellants. It was contended that there was no reason as to why Lalan Mandal should kill Neelam Devi who has lodged a case for the murder of Saraswati Devi, the mother of the informant. Shri Singh was emphatically submitting that the solitary evidence of P.W.2 has to be discarded and the appeals have to be allowed.

12. Sushri Sashai Bala Verma, the learned Additional Public Prosecutor took us through the relevant part of the evidence of witnesses, like, P.Ws. 1, 3, 4 and 7 to point out that there was some land dispute between the deceased in one hand and appellant Lalan Mandal and there was some title suit pending also, as such, the motive has been established. Submission was that the

solitary evidence of Gopal Thakur (P.W.2) was inspiring confidence and it was getting support from other witnesses, like, Bipin Ram (P.W.1) and Charittar Mandal (P.W.3).

13. Before we examine the contentions of the two sides, we want to note that while perusing the evidence of the witness, like, Bipin Ram (P.W.1) what appears from his evidence is that there may not be an eye witness to the occurrence. P.W.1 stated that he was at Sakhua Chowk where he had gone to purchase some article and while he was there he heard the sound of gun shot and then say that there was some scuffle going on in between Neelam Devi and appellant Lalan Mandal where appellant Jamun Mandal was also present and further that Lalan Mandal fired the shot which hit the deceased Neelam Devi in her head and chest. During cross-examination the witness stated as appears from paragraph-7 of P.W.1 that as soon as he picked up the sound of gun shot, he started running in the village raising *Hulla*. He did not ask anyone as to from which direction the sound had come. He further stated that he ran into the village to raise the alarm and he reached the place of occurrence two minutes after he had heard the sound of gun shot. The very first line which appears in paragraph-8 of P.W.1 when read with those appearing in paragraph-7 gives an impression as if there was a distance between the place of



occurrence and the place where P.W.1 had gone to purchase some article and as soon as he had picked up the sound of gun shot, he was slower inasmuch as to run to his village to raise an alarm as while running he could reach the place of occurrence in two minutes and he reached after two minutes after hearing the sound of gun shot. Thus, it does not appear safe to rely upon the evidence of P.W.1 as an eye witness. It could be doubtful that he had seen the occurrence from where he had gone to purchase some article. His very evidence in paragraph-7 and 8 makes it unsafe to place reliance upon him.

14. So far as P.W.2 is concerned, we have scanned his evidence with all care and caution. The witness was the star witness of the prosecution and it was he, who had narrated the whole story to P.W.5 when Sikandar Mandal (P.W.5) had arrived at village Sakhua after having been informed by someone on telephone about the incident. P.W.2 stated that while he was sitting at his *Darwaza*, Neelam Devi came there started enquiry about his welfare when the two appellants came there and caught the locks of her hair and started beating her up. P.W.2 forbid them to beat her up. The two appellants Lalan Mandal and Jamun Mandal dragged the lady for 2-4 cubits and thereafter appellant Lalan Mandal fired two shots one hitting into the head of the

deceased while the other hitting her chest. The deceased fell down and died there. P.W.2 raised alarm upon which the accused persons ran away from there.

15. An attempt was made by Shri Singh, the learned senior counsel to castigate the evidence of the witnesses on the ground that in spite of the Investigating Officer having come to the village after having received the information, this witness was shying away from him and was not giving his statement though he had been a witness to the inquest and had signed the report. Submission was that he escaped being questioned by the police and as per his own evidence in paragraph-12 he went into the fields to either hide himself or to avoid being questioned. We very carefully examined the contentions of the learned counsel as regards the merit of the evidence of P.W.2 and found that the inference which has been placed before us by the learned senior counsel from the reading of the evidence of P.W.2 in its entirety and that part which appears in paragraph-12 could not be such as was pointed out to us by the learned senior counsel. Paragraph-12 of the evidence of P.W.2 is cross-examination as regards the arrival of the police at the place of occurrence and steps which were taken by him in order to investigate the case. It was stated by P.W.2 that two hours after the incident, the Investigating Officer



had arrived there by a jeep and the Investigating Officer did not put any question to P.W.2. P.W.2 stated that he did not make any statement to the Investigating Officer nor did he go to Sanhaura police station for lodging the report and further that he was not keeping a watch also on the dead body and in fact he had gone into the fields when the Investigating Officer had come. But just after that line indicating that he had been away into the fields, the witness had stated that he was questioned by the police on the description of the occurrence and he had given the statement to the police which was recorded by the police and which was also read over to him but he was not required to sign it. P.W.2 stated that the Investigating Officer held inquest after recording his statement and he had also been a witness to that. Thus, what appears is that the witness might have been in the fields when the police had arrived but probably knowing about the arrival of the police he had rushed to the place of occurrence and he had very well associated with the investigation of the case and there does not appear anything that he was shying away or was avoiding for being questioned. The other limb of the attack on the merit of the P.W.2 which was stated by Shri Singh was that why the witness P.W.2 did not lodge the case himself and waited for arrival of P.W.5. We want to point out that reacting to a situation varies from man to



man. We treat such instances as matters between two persons and we simply avoid getting involved in such matters with a fear roaming in our mind that by reporting the matter ahead of the family members of the deceased, we could be simply earning the wrath and enmity. Such a common psychology which prevails in every man in the society that one could hardly have any explanation to this social behaviour. Besides what we find is that the witness might not have approached himself with the police with a report in spite of having seen it but as soon as the police has arrived at the place of occurrence, he was quick and prompt in assisting himself thoroughly and completely with the investigation of the case. While perusing the evidence of P.W.2, one important aspect which influenced us very much was that he had probably equal relationship both with the accused and the family of the deceased or the informant. Nothing was brought on record to show that any enemies was being carried by P.W.2 in his mind towards either of the two appellants or he was as seriously interested in the affairs of either the deceased Neelam Devi or his husband Sikandar Mandal that he could be having tendency of being partial towards them so as to state any false fact against the appellants. This particular cross-examination of P.W.2 had very well with us while evaluating the merit of the case.

16. The manner of occurrence which was described by P.W.2, when he stated that the first shot was fired by appellant Lalan Mandal into the head of the deceased and the second into the chest, gets corroboration from the evidence of Dr. Yogesh Prasad Saha (P.W.6) who had found the following two ante-mortem gun shot injuries:

(i) One entrance wound 3/4" x 3/4" with inverted and blackened margin on left nipple. The projectile entered the chest cavity and came out by an exit wound 1/2" x 1/2" size with everted margin on left side of back 2" below lower angle of left scapula in mid scapular line. P.W.6 found the heart punctured with lacerated margin. The right lung was found lacerated and chest cavity contains blood.

(ii) One entrance wound 1/2" x 1/2" size with inverted and blackened margin behind right ear. The projectile entered skull cavity and came out by an exit wound 3/4" x 3/4" size on left parietal 2" above the midpoint of left pinna. The right temporal parietal bone of skull bone was found fractured.

In the opinion of P.W.6, the injuries had been caused by fire arms and the death has been caused on account of the injuries to the brain tissue as also on account of the haemorrhage within 12 to 24 hours from the time of holding of the post-mortem examination.

17. The evidence of P.W.2 indicates that the lady was caught by her hairs, was dragged from the *Darwaza* of P.W.2 to a particular place and then she was shot firstly into her head and secondly into her chest. The range could be very close which is further indicated by the fact that the doctor P.W.6 had found the blackening around the two wounds. Thus, what we find is that the

manner of occurrence which was narrated by P.W.2 in his evidence appears quite acceptable and that has further been corroborated by the evidence of P.W.6. The evidence of P.W.2, in our opinion, was quite sufficient and creditworthy on account of reasons which we had just recorded.

18. It is true that some witnesses, like, Bipin Ram (P.W.1), Charittar Mandal (P.W.3), the brother of the deceased or Mahendra Ram (P.W.4) might have come forward to state that they had also witnessed the occurrence in their own way but while we were perusing the evidence of witnesses, they could not get our confidence as seriously as much while we were perusing the evidence of Gopal Thakur (P.W.2). Witnesses, like, Bipin Ram (P.W.1) and Charittar Mandal (P.W.3) might have come into the witness box but their evidence did not appear of that quality which could be inspiring our confidence. In our opinion, the evidence of P.W.2 in itself was sufficient testimony to the incident which was taken place on 12.12.2006 in the afternoon in which Neelam Devi, the wife of P.W.5 had been murdered. P.W.5 is definitely the informant but he is not an eye witness to the occurrence. Whatever he reported to the police was the statement which had been narrated by P.W.2 to him. P.W.5 was only a mouth piece who was narrating the same facts which were told to P.W.5 by P.W.2.



Ganga Mandal (P.W.7) the father of the deceased does not appear an eye witness and had come on hearing the news about the incident and the manner in which it was done. However, his evidence is important in some aspect of the case. The contention of the learned counsel was that the motive for the occurrence was not established. It is from the evidence of Ganga Mandal (P.W.7) that we could get some of the facts relating to the genealogy of the family. Neelam was residing at village Nasrat Khani. It appears from the evidence of P.W.7 that informant Sikandar Mandal had another brother Bablu and Sikandar Mandal had three sisters. It appears further that one of the sisters of the informant Sikandar Mandal had been married to appellant Lalan Mandal and as may appear from the evidence of P.W.7 in paragraph-9, the three sisters of Sikandar Mandal were litigating for their shares of land and title suit were pending in court. P.W.7 stated that he could not tell the number of suit but that was pending. Bipin Ram (P.W.1) has also stated that there was land dispute between deceased Neelam Devi and the present appellant Lalan Mandal and further that appellant Lalan Mandal was the *Jija* (sister's husband) of the deceased. It further appears from paragraph-4 of P.W.1 that appellant Lalan Mandal was also a co-villager of the informant and that Lalan Mandal had got some land from her father and mother-in-law and



further that the mother of the informant Saraswati Devi was favouring the daughters, i.e., the wife of Lalan Mandal and her other two daughters. P.W.4 in paragraph-5 had also stated that Neelam Devi had some land dispute with appellant Lalan Mandal and which was the reason for the murder of Neelam Devi. Thus, it cannot say that there was no evidence regarding the land dispute between the deceased and the appellants. It is true that the informant had stated that there were 12-14 *Bighas* in his village and the appellant Lalan Mandal was adamant to grab the land and in attempt to put pressure, he had murdered Sarawati Devi and had foisted a false case implicating Neelam Devi in that case. We have already noted that the appellant Lalan Mandal and informant Sikandar Mandal were co-villagers so we do not see any flow or unusualness in the claim of the informant when he was stating that in that particular village there was a dispute for land which appears coming out of the evidence of witness we had just referred to. The deceased was not residing in the village where the landed property was situated or which was the place of residence of informant Sikandar Mandal rather she was residing in her mother's house at Nasrat Khani. It appears from the evidence also that the deceased was not residing and she was residing with the informant at Nasrat Khani where she was requested by Jamun Mandal to come to



village Sakhua for getting the harvested paddy crop thrashed. The circumstances which appear created on account of the land dispute may be the reason for her presence in village Sakhua. The evidence we have just discussed as regards the dispute of particular land reasonably satisfies that there was strong motive in the mind of the accused to commit the offence.

19. One of the most important contentions which was raised by Shri Singh in respect of the establishment of the place of occurrence. It was contended by Shri Singh that the place of occurrence was something different because the informant had very categorically stated in his evidence that the dead body of his wife was found lying in front of his house but when P.W.8 had inspected the place of occurrence and had indeed held inquest upon the dead body had found the place different from what was stated by P.W.5. We were careful while considering the submission and we specially went through the evidence of P.W.8, the Investigating Officer. The description of the place of occurrence given by P.W.8 in paragraph-5 indicates that the road which was the place of occurrence was running from north to south and on the western flank of the road was lying the dead body of Neelam Devi. The road was about 10-12 feet in width and just west of the road was situated the house of P.W.5, i.e., the informant. To the south of



that particular road was the house of Gopal Thakur. From evidence of P.W.8 in paragraph-5 it does not appear to us that could be any other place than the place of P.W.5's house where the dead body could have been found. The quality which comes through the evidence of P.W.2 leaves no room to doubt the prosecution claim and the first statement of the informant that the dead body was lying in front of his house. P.W.2 had stated in paragraph-19 where he stated that after having heard the sound of gun shot, he went to the place of occurrence and he had found the deceased lying on the ground.

20. However, when we had come to judge the complicity of the two appellants, we had a serious doubt regarding the complicity of Jamun Mandal, the other appellant who had preferred Cr. Appeal (DB) No. 229 of 2009. In the First Information Report there was no specific role assigned to him except that there could be some sort of conspiracy between appellant Jamun Mandal and Lalan Mandal. In a case of conspiracy it is very difficult to fasten the liability on a person. Here in the present case P.W.2 has stated that Jamun Mandal was present but he does not make any allegation against Jamun Mandal that he had also dragged the deceased by lock of her hairs. Mere presence of Jamun Mandal may not constitute an offence and to

fasten any liability of acting in furtherance of the common intention. There is no evidence also on record that there had earlier been any conference between Jamun Mandal and Lalan Mandal which had been seen by any of the witnesses. The mere allegation of having connived or having cooperated in any manner, in our opinion, does not create a liability against the appellant Jamun Mandal. His case appears quite doubtful as a result of which we acquit appellant Jamun Mandal of Cr. Appeal (DB) No. 229 of 2009 by setting aside that part of the judgment impugned herein by which he was convicted and sentenced. Thus, we allow Cr. Appeal (DB) No. 229 of 2009. As regards Cr. Appeal (DB) No. 262 of 2009, we have already discussed the evidence with all seriousness it deserves and we have recorded our findings in the light of those evidence and observations. We find that the appeal preferred by appellant Lalan Mandal, i.e. Cr. Appeal (DB) No. 262 of 2009 does not have any merit. The same is dismissed. Appellant Lalan Mandal is in custody. He shall serve out the sentence passed upon him.

(Dharnidhar Jha, J.)

(Amaresh Kumar Lal, J.)

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