

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No. 786 of 2010

Arising out of PS.Case No. -79 Year- 2002 Thana –Naya Ram Nagar District- Munger

- =====
1. Subodh Mandal, Son of Sri Phekan Mandal.
 2. Ramji Mandal, Son of Sri Raghunath Mandal.
- Both are Residents of Village- Bazrangbali Nagar, P.S. Naya Ram Nagar,
District- Munger.

.... Appellants

Versus

The State of Bihar

.... Respondent

with

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Criminal Appeal (DB) No. 745 of 2010

Arising out of PS.Case No. -79 Year- 2002 Thana –Naya Ram Nagar District- Munger

- =====
1. Shital Mandal, Son of Late Mannu Mandal.
 2. Hilan Mandal, Son of Late Chinilal Mandal.
 3. Bhisho alias Bishikha Mandal Son of Late Mannu Mandal.
- All are residents of Village- Bazrangbali Nagar, P.S.- Naya Ram Nagar,
District- Munger.

.... Appellants

Versus

The State of Bihar

.... Respondent

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Appearance :

For the Appellants : Shri Ajay Kumar Thakur, Advocate.
Shri Ram Naresh Roy, Advocate.
Shri Yogendra Kumar, Advocate.
Shri M. K. Gautam, Advocate.

(In CR. APP (DB) No. 786 of 2010)

For the State : Shri Dilip Kumar Sinha, A.P.P.

(In CR. APP (DB) No. 745 of 2010)

For the State : Susri Shashi Bala Verma, A.P.P.

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CORAM: HONOURABLE SHRI JUSTICE DHARNIDHAR JHA

and

HONOURABLE SHRI JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

(Per: HONOURABLE SHRI JUSTICE DHARNIDHAR JHA)

Date: 07-07-2015

The two appeals are directed against the judgment of
conviction dated 01.06.2010 and order of sentence dated 02.06.2010
passed by the learned Presiding Officer, Fast Track Court IV, Munger

in Sessions Trial No. 1054 of 2008, by which the five appellants of the two appeals were held guilty of committing offence under Section 302/34 of the Indian Penal Code and each of them was directed to suffer rigorous imprisonment for life as also to pay a fine of Rs. 5,000/-, else to suffer simple imprisonment for one year.

2. As per the *fardbeyan* of Makhri Devi (PW6), her husband Jodhi @ Jogi Mandal had gone out of his house with his relative Police Mandal towards Rai Pokhar. She after a while heard the sound of gun shot and went into the direction from where the sound of gun shot had emanated and found that her husband had been shot at and he had run for his life when he was chased by the five appellants. When he reached near the *jhopri* of one Jano Mandal, appellant Subodh Mandal and Ramji Mandal fired one shot each to kill the deceased.

3. The case was registered and investigation was carried out and on completion of the same the appellants were sent up for trial.

4. During trial twelve witnesses were examined out of whom PWs. 1, 2, 3, 4, 5 and 8 were declared hostile on account of having not supported the prosecution story. Makhri Devi (PW6) the informant, Kedar Mandal (PW7), American Mandal (PW9) and Bhato Mandal (PW10) came to support the prosecution charge. Ashok

Kumar Sharma (PW11) was a formal witness who proved the writings of the First Information Report and *fardbeyan* and the signature of the officer who had drawn up the two documents. Dr. Prithvi Raj (PW12) had held post-mortem examination on the dead body and had prepared the post report (Ext.3).

5. We were taken through the evidence of PWs. 6, 7, 9 and 10 by Shri Ajay Kumar Thakur, the learned counsel appearing on behalf of the appellants in the two appeals and what we find is that in fact PW6 was not an eye witness as she herself stated in the very examination-in-chief that she came out of her house ten minutes after hearing the sound of gun shot to find that her husband had been shot into his back and head and that he was lying dead. Likewise, Kedar Mandal (PW7) stated in paragraph-3 that when he reached at the pond, he found that PW6 was only present there and police had also arrived there. A huge number of persons had also assembled there. Thus, what appears is that Kedar Mandal (PW7) must have appeared at the scene of occurrence after PW6 had arrived there. Not only that the *fardbeyan* of PW6 was recorded at 8.15 A.M. and the incident had occurred at 7.00 A.M., i.e., one hour and fifteen minutes ahead of the drawal of the *fardbeyan*. If the police was already there when PW7 had arrived then, necessarily the possibility of the witness of seeing the occurrence is completely ruled out. So far as Americal Mandal



(PW9) is concerned, he stated in the very examination-in-chief that after hearing the sound of gun shot he came out of his house and also to the place of occurrence to find that the deceased was lying in a pool of blood and was dead. He also stated that the accused persons were also present there. PW9 did not state that any of the accused persons was carrying any arms. Thus, the evidence of PW9 also does not lead to any conclusion as regards the culpability of the appellants. So far as the evidence of Bhato Mandal (PW10) is concerned, he has supported the prosecution story in examination-in-chief as an eye witness but in cross-examination he stated that when he arrived at the place of occurrence, he found that the accused persons had already left and further that he went near the dead body and saw that the deceased had been shot into his head and also that before he had arrived, more than hundred persons had assembled at the place of occurrence. Thus, what we find is that the possibility of PW10 having seen the occurrence also appears doubtful. On appraisal of the evidence of above witnesses, i.e., PWs. 6, 7, 9 and 10, we find that the evidence of those witnesses indicated that they could never be eye witnesses or that their claim of having seen the occurrence was not acceptable as the possibility was that they had arrived at the scene of occurrence after the commission of the murder of deceased.

6. After appraisal of evidence of witnesses, what we

find is that the two appeals are meritorious. They are allowed. The judgment of conviction dated 01.06.2010 and the order of sentence dated 02.06.2010 passed in Sessions Trial No. 1054 of 2008 upon the appellants are hereby set aside. All the appellants are acquitted of the charge, they had been held guilty of. Appellants Subodh Mandal and Ramji Mandal are in custody. They shall be released forthwith if not wanted in any other case. The three appellants, namely, Shital Mandal, Hilan Mandal and Bhisho @ Bishikha Mandal are on bail. Each of them shall stand discharged from the liabilities of their respective bonds.

(Dharnidhar Jha, J.)

(Ahsanuddin Amanullah, J.)

Anand Kr./Sanjay/NAFR

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