

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.261 of 2007

(Against the judgment of conviction dated 09.01.2007, and order of sentence, dated 17.01.2007, passed by Shri Umesh Chandra Srivastava, Additional Sessions Judge, Fast Track Court-IV Saharsa in Sessions Trial No. 164 of 2003 (S) + 04 of 2004 (s), arising out of Supaul P.S. case No. 252 of 2002, G.R. No. 626 of 2002)

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1. Arun Mandal, Son of Sri Deo Narayan Mandal.
2. Dinesh Mandal, Son of Sri Chhotakan Mandal.
Both residents of Village- Babhani Chakla, P.S.- Supaul, District- Supaul.
..... Appellants

Versus

The State of Bihar
..... Respondent.

with

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Criminal Appeal (DB) No. 270 of 2007

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1. Surya Narayan Mandal, Son of Sri Bachnu Mandal.
2. Pappu Mandal, son of Sri Bachnu Mandal.
Both residents of Village- Babhani Chakla (Sant Nagar), Ward No.22 of Supaul, P.S.- Supaul, District- Supaul.
..... Appellants

Versus

That State of Bihar
..... Respondent.

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Appearance :

(In CR. APP (DB) No. 261 of 2007)

For the Appellant/s : Mr. Mahendra Pathak, Advocate
For the Respondent/s : Mr. Abhimanyu Sharma, Addl. P.P.

(In CR. APP (DB) No. 270 of 2007)

For the Appellant/s : Mr. Shandipan, Advocate
For the Respondent/s : Mr. Abhimanyu Sharma, Addl. P.P.

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CORAM: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH

and

HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH)

Date: 23-02-2015

Cr. Appeal (DB) No. 270 of 2007 is directed against
judgment of conviction dated 09.01.2007, and order of sentence,



dated 17.01.2007, passed in Sessions Trial No. 164 of 2003 (S) + 04 of 2004 (s), arising out of Supaul P.S. case No. 252 of 2002, G.R. No. 626 of 2002, whereby the learned Additional Sessions Judge, Fast Track Court-IV Saharsa has convicted the appellants Surya Narayan Mandal and Papu Mandal under Section 302 of the Indian Penal Code and Section 27 of the Arms Act and sentenced them to life imprisonment and a fine of Rs.5000/- and in default thereof to serve a further S.I. for two years under Section 302 of the Indian Penal Code. Both the appellants have been further sentenced to undergo imprisonment for three years and a fine of Rs. 500/- and in default thereof to serve a further S.I. for one month. However, both the sentences have been ordered to run concurrently.

2. Cr. Appeal (DB) No. 261 of 2007 is directed against judgment of conviction dated 09.01.2007, and order of sentence, dated 17.01.2007, passed in Sessions Trial No. 164 of 2003 (S) + 04 of 2004 (s), arising out of Supaul P.S. case No. 252 of 2002, G.R. No. 626 of 2002, whereby the learned Additional Sessions Judge, Fast Track Court-IV Saharsa has convicted the appellants Arun Mandal and Dinesh Mandal under Sections 302/34 of the Indian Penal Code and sentenced them to life imprisonment and a fine of Rs.5000/- and in default thereof to serve a further S.I. for two years under Section 302 of the Indian Penal Code.

3. The prosecution case, in short, as made out in the statement of Smt. Harihar Devi, wife of late Chandeshwari Yadav of village Babhanai Chakla (Sant Nagar) on 10.08.2002 at 4.00 A.M. at her house, is as follows:

(i) The informant, Smt. Harihar Devi, Shanti Devi, wife of late Chandeshwari Yadav of village Babhanai Chakla (Sant Nagar) stated that at about 10.00 P.M., after taking food her husband slept on a cot in Baithka of the house, which was south. The informant washed her fingers wound with hot water in the Varanda. At about 1.00 A.M., she heard a sound coming from the door side and she rushed in the said direction, whereupon she saw Pappu Mandal, aged 30 years, firing at her husband. Her husband, who was in an injured state said that Surya Narayan Mandal had fired first. The informant saw Surya Narayan Mandal and Pappu Mandal fleeing towards east from her Darwaza. Her husband became restless because of the fire arm injury wounds. Her husband told her that Dinesh Mandal, son of Chhotkan Mandal and Arun Mandal, son of Debu Mandal, have fired shot at him. In the meantime, the informant's neighbour, namely, Maheshwari Yadav (P.W. 2), Siwan Yadav (P.W. 11) and others arrived, who carried her husband to hospital where he died during the course of treatment.

(ii) She stated that the previous day her husband had left at 12.00 noon and returned at about 9.00 P.M. In his absence

Surya Narayan Mandal (appellant of Cr. Appeal No. 270 of 2007) had arrived at her house at around 6.00 P.M. and enquired about his whereabouts. The other appellants, namely, Dinesh Mandal and Pappu Manda had also accompanied him.

(iii) The motive for the occurrence is a pending dispute between her husband and the accused persons. The statement was read over to the informant in presence of her daughter and her son-in-law, Ganesh Yadav, and finding the same to be correct, she made her L.T.I.

4. On the basis of the fardbeyan of Harihar Devi, a formal F.I.R. was drawn bearing Supalu P.S. case No. 252 of 2002 dated 10.08.2002 under Sections 302/34 of the Indian Penal Code, and Section 27 of the Arms Act.

5. The police after investigation, submitted *charge sheet* under Sections 302/34 of the Indian Penal Code and 27 of the Arms Act and accordingly cognizance was taken by the learned Court. The case was committed to the Court of Sessions on 26.08.2003. After commitment of the case, charges were framed under Sections 302/34 of the Indian Penal Code against the accused Dinesh Mandal and Arun Mandal and charges were framed under Section 302 of the Indian Penal Code and 27 of the Arms Act against the accused Pappu Mandal and Surya Narayan Mandal. The accused persons pleaded not guilty and claimed to be tried.



6. The Prosecution in support of its case examined altogether 14 (fourteen) witnesses, who are as follows: P.W. 1 is Parmeshwari Yadav, P.W. 2 Maheshwari Yadav, P.W. 3 is Rijo Yadav. P.W. 4 is Urmila Devi, P.W. 5 is Harihar Devi (informant), P.W. 6 is Anju Devi, P.W. 7 is Rajeshwar Thakur, P.W. 8 is Ganesh Sah, P.W.9 is Janki Prasad Yadav, P.W.10 is Biku Paswan, P.W. 11 is Shivan Yadav, P.W.12 is Basudeo Yadav, P.W. 13 is Manoj Kumar and P.W. 14 is Ramjee Lal Das. The prosecution also produced a number of documents on record, which were marked as Exts.

7. The Defence too examined as many as 14 witnesses to the effect that they are innocent and they have not committed occurrence, namely, D.W. 1 Shiv Narain Sah, D.W. 2 Sheo Shankar Yadav, D.W. 3 Ruddi Mandal, D.W. 4 Bishundeo Kamat, D.W. 5 Bindeshwari Mandal, D.W. 6 Ram Prasad Mandal, D.W. 7 Safique, D.W.8 Jagdeo Prasad Yadav, D.W. 9 Jag Narain Kamat, D.W.10 Md. Rafique Alam, D.W. 11 Sita Ram Thakur, D.W.12 Md. Ziyaul Rahman, D.W. 13 Md. Safique Hoda, and D.W. 14 is Kishundeo Kamat. They had not tried to establish or prove alibi of the accused.

8. In their statement under Section 313 of the Cr.P.C., the accused-appellants have in fact made complete denial of the occurrence. The defence too also examined some documents as Exts.

9. The trial court on consideration of materials on

record convicted the appellants, namely, Surya Narayan Mandal and Papu Mandal under Section 302 of the Indian Penal Code and Section 27 of the Arms Act and sentenced as noticed in the earlier paragraph.

10. Being aggrieved, the accused persons have filed these two appeals.

As noticed in the earlier paragraphs, the prosecution examined 14 witnesses in support of its case besides exhibiting a number of documents. Out of these 14 witnesses, P.W.1, P.W. 2, P.W.4, P.W. 5 and P.W.6 have been examined as eye witnesses. P.W.8 Ganesh Sah, P.W.11 Shivan Yadav and P.W. 12 Basudeo Yadav, who were corroborative witnesses, were declared hostile. P.W. 10 Biku Paswan is a formal witness.

11. Manoj Kumar P.W. 13, who is the Investigating officer of the case. He recorded the Fardbeyan of Harihar Devi and inspected the place of occurrence. He proved inquest report (Ext.4). P.W. 7 Rajeshwar Thakur has conducted the post-mortem on the person of the deceased Chandeshwari Yadav, and proved the post-mortem report as Ext.1. P.W. 14 Ramjee Lal Das has proved the complaint case filed by the deceased Chandeshwari Yadav bearing Complaint Case No. 325 C of 2001 (Ext.5) against the accused persons including the appellants, Pappu Mandal, Dinesh Mandal and Arun Mandal. It is relevant to state here that Pappu Mandal is

full brother of other appellant, namely, Surya Narayan Mandal.

12. P.W. 7 Doctor Rajeshwar Thakur has proved the Post-mortem report as Ext.1 conducted the post-mortem on the person of the deceased on 10.08.2002 and found the following injuries on the persons of the deceased:

External Injuries:

1. Lacerated wound with burn margin on the left side of face near left angle of mouth 1" x 1/3".
- (2) Left chest upper part in the intra clavi cular region 3/4" x 1/2".

Internal Injuries:

1. Left ventricle of heart injured and opening in the ventricle present.
2. Left lung injured in the lower part.
3. Chest cavity-full of blood clots.
4. Bullet removed from abdominal cavity near urinary bladder.

13. According to the doctor, the cause of death was cardiac-respiratory failure due to fire-arm injury and due to loss of blood. From the report of the doctor, it is evident that the deceased died on account of fire-arm injury.

14. The core issue would be whether the prosecution has succeeded in establishing that it is the appellants, who have killed.

15. The prosecution as noticed above have examined P.W.1, P.W. 2, P.W.4, P.W. 5 and P.W.6 as eye witnesses of the

occurrence. P.W. 3 Rijo Yadav, son of the informant, was away from the village and he came to the place of occurrence only after 4-5 minutes of the occurrence.

16. We would first examine P.W. 1 Parmeshwari Yadav, a relative of the deceased and lived close by the house of the informant. He stated that in the fateful night at about 1.00 P.M. On hearing sound of firing, he awoke and moved in the direction of the sound, which zeroed near about the house of Chandeshwari Yadav. In his torch light, he identified Pappu Mandal, Surya Narain Mandal, Dinesh Mandal and Arun Mandal. He saw Surya Narayan Mandal with pistol. The daughter and wife of Chandeshwari Yadav were weeping. In his deposition, he stated that Chandeshwari Yadav told him that Surya Narayan and Pappu fired upon him, whereas Dinesh and Arun were by their side. He found injury on the chest and beneath the left eye of Chandeshwari Yadav. He stated that Chandeshwari Yadav has filed a criminal case against Surya Narayan Mandal and others and the accused persons were threatening and putting pressure to compromise the case. As Chandeshwari Yadav did not relent to the pressure, the incident was given shape.

17. We find that the defence has not been able to point out any worthwhile infirmity in the statement of the witness, save and except that he is a related and partisan witness and his evidence

should not be given any credence because of his proximity with the deceased and his family which itself cannot be a ground for discarding his evidence.

18. The prosecution next examined one Maheshwari yadav as P.W.2. He too stated that in the fateful night, he woke up on the sound of firing while he was at his house. On hearing second sound of firing he came to the house and saw Surya Narayan, pappu, Dinesh and one more person fleeing from the Darwaza of the deceased Chandeshwari. The family members of Chandeshwari Yadav, namely, his wife Harihar Devi, Urmila Devi and Anju Devi were weeping.

19. The defence submits that P.W. 2 is not worthy of reliance, as he did not state before the investigating officer that he saw the accused-appellants fleeing from the house of Chandeshwari Yadav. We find substance in the submission of the defence.

20. P.W. 13 Manoj Kumar, the investigating officer of the case, in para. 30 of his deposition stated that P.W. 2 has not made any such statement before him. It thus becomes clear that P.W. 2 has tried to improve the case in the court. We thus hold him unreliable and unworthy of credence.

21. We are now left with the evidence of the family members of the deceased, namely, his wife Harihar Devi, and his two married daughters, namely, , Urmial Dvi and Anju Devi.



22. Urmila Devi (P.W. 4) in her evidence before the Court stated that on the relevant night she was at her Sasural, which is situated at a distance of 40-50 feet from the house of her deceased father. On hearing sound of firing emanating from the direction of the house of her, she proceeded accordingly. As soon as she came near the house of her father Chandeshwari Yadav, she saw the appellants as well as one Mukesh fleeing away with pistol. The defence has challenged the credibility of the witness on more than one ground. We find that this witness made statements before the police after three months of the occurrence. Besides this, in para. 3 of her examination-in-chief, she stated that she saw five accused persons fleeing away from the place of occurrence, which is not the case of any of the witnesses. Furthermore, when her attention was drawn to her first statement before the police that she had not revealed the names of the accused persons, who were fleeing away, she denied the suggestion. The investigating officer in his deposition stated that P.W. 4 Urmial Devi did not state that she saw the accused persons fleeing away. She further stated that it is Pappu Mandal, who fired the first shot and Surya Narayan hit the second shot, which is not even the prosecution case in the F.I.R. According to the informant, namely Harihar Devi, (P.W. 5), it is Surya Narayan Mandal, who opened first fire shot on Rajeshwari Mandal. In view of apparent contradictions in the statement of P.W. 4 before the

police and before the Court and also in view of the fact that she did not volunteer to make her statement for three months. We find her testimony unworthy of evidence.

23. Now remains the evidence of P.W. 5, the informant, and P.W. 6, another married daughter of the informant. P.W. 5, the informant, in her deposition has reiterated her statements made before the police in her fardbeyan. In her examination-in-chief, she stated that the occurrence took place at about 1.00 A.M. in the night. She stated that just a day before the occurrence at 12.00 noon, her husband had gone to Supaul to sell vegetables and he returned only at 9.00 P.M. In the meantime, the accused persons, namely Surya Narayan Mandal, pappu Mandal and Dinesh Mandal came to her house and enquired about her husband. After returning from Supaul at 9.00 P.M., her husband went to sleep on a cot in his Baithka, which faced south. The informant began to wash her finger wounds with hot water in the Varanda facing east of her house. At about 1.00 A.M. she woke on fire of sound and rushed towards her Darwaja. She saw Pappu Mandal and Surya Narayan Mandal fleeing with pistol after shooting her husband. On hearing her halla, P.W. 1, P.W.2 and others came, who carried her husband to Supaul hospital, where he succumbed to the injuries. This witness has remained totally unshaken in her cross-examination.

24. The defence has not been able to elicit any



substantial contradictions save and except some minor ones. According to defence, she did not state before the police that the accused persons used to threaten her husband with dire consequences, if he did not withdraw the case, though she made such statement before the Court. In our view, the infirmity pointed out by the defence would at best be an omission and not a contradiction. More so, when she has stated in the F.I.R. that her husband was having enmity with the accused persons on account of which the occurrence took place.

25. Besides this, Anju Devi (P.W.6), another married daughter of the informant, too has supported the prosecution case. She stated that she had come to her mother's place and too woke up on sound of firing. She also proceeded towards the Baithka where her father was sleeping. In the light of Lantern, she saw Pappu Mandal, Surya Narayan Mandal, Dinesh Mandal and Arun Mandal fleeing away. Pappu Mandal and Surya Narayan Mandal were holding pistol in their hands. However, the investigating officer in para. 39 of his deposition stated that this witness has not stated before him that she saw these persons fleeing away in the Lantern light, rather she learnt about the names of the accused persons from her mother (P.W. 5). In our view, the infirmity is a minor one, as she did reveal the names of the accused fleeing away, though she learnt the names from her mother. In any view of the matter, we find that



the evidence of P.W. 5 has gone almost unchallenged. She was a natural witness being the wife and sleeping in the same house. Furthermore, she saw one of the two accused persons firing at her husband and also fleeing thereafter. She consistently stated before the police as well as in the court that Dinesh Mandal and Arun Mandal were also there with Surya Narayan Mandal and Pappu Mandal. The evidence of P.W.5 also finds support from the evidence of P.W. 1 Parmeshwari Yadav and P.W.6. Merely because Parmeshwari Yadav happens to be his relative, his evidence cannot be brushed aside. The ocular evidence of P.W.1, P.W.5 and P.W. 6 is also corroborated by Doctor P.W.7, Rajeshwar Thakur.

26. It would appear from the evidence of P.W. 5 coupled with the evidence of P.W. 1 that it is Surya Narayan Mandal and Pappu Mandal, who shot at the deceased on account of which he sustained two fire arm injuries. The post-mortem report also shows that the deceased sustained two fire arm injuries on the vital portion of his body, namely, chest and around his eyes. The doctor too has opined that the injuries were inflicted by fire arms. As such we find that the prosecution has established the charge of guilt under Sections 302/34 of the Indian Penal Code and Section 27 of the Arms Act against the appellants Surya Narayan Mandal and Pappu Manda, as such we uphold the judgment of conviction and order of sentence against them by the learned trial court.



27. So far as Arun Mandal and Dinesh Mandal are concerned, we find that they have been charged under Section 302/34 of the Indian Penal Code. Though, only two incriminating materials have come in course of trial that both the persons were seen standing by the side of Surya Narayan Mandal and Pappu Mandal on the fateful night and that they had accompanied him to the house of informant at about 6.00 P.M., when her husband was not there. There is no whisper that they were armed with any weapon much less with fire arms. There is no evidence that they participated in the occurrence in any manner. It is not even alleged that they exhorted or persuaded the two appellants to kill the deceased. There is no material to establish that they showed the same common intention of committing murder of the deceased Chandeshwari Yadav, vis-à-vis the appellants. We further find from the evidence of P.W.5 that on the previous day, it was Surya Narayan Mandal, who came and enquired about the whereabouts of the informant's husband and her evidence is only to the effect that they were standing behind Surya Narayan Mandal. In absence of any material on record, it would not be safe to convict these two appellants, namely Arun Mandal and Dinesh Mandal with the aid of Section 34 of the Indian Penal Code and we are inclined to grant benefit of doubt to them and acquit them of the charge of Section 302/34 of the Indian penal Code. The appellants, Arun Mandal and Dinesh

Mandal, of Cr. Appeal (D.B) No. 261 of 2007 are discharged from the liabilities of their bail bonds.

28. In the result, Cr. Appeal (D.B) No. 261 of 2007 is allowed, whereas Cr. Appeal (D.B) No. 270 of 2007 is dismissed.

29. It appears from the record that the appellants of Cr. Appeal (D.B) No. 270 of 2007 are in custody since 09.01.2007, they will remain in custody till serving all the balance period.

(Samarendra Pratap Singh, J.)

(Kishore Kumar Mandal, J.)

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