

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.112 of 2009

Arising out of PS.Case No.-73 Year-2002 Thana-Sono District- JAMUI

1. Kamal Mian, Son of Late Bechu Mian.
2. Luqman Mian, Son of Late Bechu Mian.
3. Manzoor Mian, Son of Natho Mian.
4. Allauddin Mian, Son of Hakim Mian.
5. Ghyas Mian, Son of Hakim Mian.
6. Islam Mian, Son of Late Badru Mian.

All residents of village Bhulua, P.S. Sono, District Jamui.

.... Appellants

Versus

The State of Bihar

.... Respondent

with

Criminal Appeal (DB) No. 177 of 2009

Arising out of PS.Case No.-73 Year-2002 Thana-Sono District- JAMUI

1. Sadique Mian, Son of Late Nuro Mian.
 2. Jalal Mian, Son of Late Bechu Mian.
- Both residents of village Bhulua, P.S. Sono, District Jamui.

.... Appellant

Versus

The State of Bihar

.... Respondent

Appearance :

(In both the appeals)

For the Appellants : Sri Ajay Kumar Thakur, Advocate
Md. Imteyaz Ahmad, Advocate
Sri Nilesh Kumar, Advocate
For the State : Susri Shashi Bala Verma, APP

CORAM: HONOURABLE SHRI JUSTICE DHARNIDHAR JHA

and

HONOURABLE SHRI JUSTICE AMARESH KUMAR LAL

ORAL JUDGMENT

(Per: HONOURABLE SHRI JUSTICE AMARESH KUMAR LAL)

Date: 30-03-2015

Both these appeals arise out of the judgment of conviction dated 06.02.2009 and the order of sentence dated 07.02.2009, passed by the learned Additional Sessions Judge, Fast Track Court No. V, Jamui in Sessions Trial No. 249 of 2004, arising



out of Sono P.S. Case No. 73 of 2002 by which all the appellants of the two appeals have been convicted and sentenced to undergo rigorous imprisonment for life under Section 302 of the Indian Penal Code, rigorous imprisonment for three years under Section 27 of the Arms Act, and rigorous imprisonment for ten years under Sections 3 and 4 of the Explosive Substances Act and to pay a fine of Rs. 5000/- each and in default of payment of fine the appellants will have to undergo imprisonment for six months. However, all the sentences have been directed to run concurrently. Both these appeals have been heard together and are being disposed of by this common judgment.

2. The prosecution case, in brief, is that on 09.07.2002 the informant Md. Mukim Ansari (P.W.6) with his father Zainul Ansari (deceased) and Diwakar Singh (D.W.1) were returning home from Sono by a motorcycle which was driven by Zainul Ansari (deceased). Diwakar Singh (D.W.1) and the informant Md. Mukim Ansari (P.W.6) were the pillion riders. At about 2.30 p.m. when they reached about 500 yards North from village Nawada which was situated on Sono-Maheshwari Pucca road, the informant saw the appellants sitting there and as soon as the motorcycle reached there, appellants Sadique Mian and Manzoor Mian fired shot at them. The father of the informant fell down with the motorcycle. The informant and Diwakar Singh were also thrown from the motorcycle.



The deceased was lying under the motorcycle. After firing of the shot Diwakar Singh fled away from there towards Nawada village. In the meantime, on hearing the sound of firing and explosion of bomb, the informant saw that Sadique Mian fired shot at his father (deceased) and Jalal Mian exploded bomb which hit the deceased. The informant returned to his father and requested the appellants not to kill his father. Thereafter Sadique Mian and Manzoor Mian asked the informant to move away otherwise he would also be killed. Appellant Islam Mian told that the deceased died. On hearing the sound of firing and explosion of bomb, people started gathering there. Thereafter all the appellants fled away towards the village. At the advise of the co-villagers, the deceased was taken to his village with a purpose of safety of the dead body. He has also alleged that his mother (P.W.1) told that the appellants came to her and told that they had fulfilled their desire.

The reason for the occurrence is that three litigations were going on between both the parties. The *fardbeyan* of the informant was recorded at his house on 09.07.2002 at 10 P.M. Thereafter Sono P.S. Case No. 73 of 2002 was instituted and after investigation charge sheet was submitted, cognizance was taken and after the trial, the appellants have been convicted and sentenced as aforesaid.

3. The defence of the appellants as appearing from

the trend of cross-examination is that the deceased was a notorious criminal and due to difference among the members of the gang, he was killed and the appellants have been falsely implicated in this case due to enmity.

4. The prosecution has examined the following witnesses to prove its case:

Amina Khatoon (P.W.1), Kaiyum Ansari (P.W.2), Dr. Sayyad Naushad Ahmed (P.W.3), Pappu Kumar Yadav (P.W.4), Krishnandan Prasad (P.W.5), Mukim Ansari (P.W.6), Dr. Suchi Prasad Singh (P.W.7) and Ayodha Yadav (P.W.8).

5. The defence has also examined one witness Diwakar Singh (D.W.1) who is said to have been travelling with the informant and the deceased by the same motorcycle.

6. The learned counsel for the appellants submits that according to the First Information Report there are two eye witnesses to the occurrence, i.e., the informant, Mukim Ansari (P.W.6) and Diwakar Singh (D.W.1). Other persons have come to the place of occurrence after the occurrence and they are as such, not the eye-witnesses. The evidence of P.W.6 is not convincing. P.W.6 has claimed to have seen the occurrence. He has also admitted that Diwakar Singh (D.W.1) was also travelling with the deceased on the same motorcycle and he was also present at the time of occurrence. There is minor difference between the statement of P.W.6 Mukim



Ansari, the son of the deceased and Diwakar Singh (D.W.1). The informant has himself admitted that there has been enmity between both the parties. There is land dispute between both the parties and as such, the appellants have been falsely implicated in this case due to enmity. In this case the Investigating Officer has not been examined which has caused prejudice to the appellants. Diwakar Singh (D.W.1) was accompanying the informant and the deceased and he was present at the time of occurrence but he has not been examined by the prosecution. To present the true facts before the court, he has been examined by the appellants as D.W.1.

7. Learned counsel for the State submits that Amina Khatoon (P.W.1) has also supported the prosecution case besides the informant (P.W.6). The doctor has also found the injuries on the person of the deceased caused by firing and explosion.

8. After hearing learned counsel for both the parties and on perusal of the records, it appears that Amina Khatoon (P.W.1), the mother of the informant and the wife of the deceased has stated that Zainul Ansari (deceased) had gone to Sono. The appellants told her that they had killed her husband (deceased). The dead body has been thrown and left in village Nawada. In her cross-examination, she has stated that she has made such statement for the first time in court. In her cross-examination, she has further admitted that there was land dispute between the deceased and the appellants.

She has also stated in paragraph-5 that Diwakar Singh (D.W.1) and her son Mokir were also accompanying the deceased. There has been no talk with them regarding the occurrence. On careful consideration it appears that her evidence is not convincing. It is not fit to be believed that the son (P.W.6) would not talk to his mother about the killing of his father.

9. Kaiyum Ansari (P.W.2) has stated that he does not know as to how the deceased was killed.

10. Dr. Saiyad Naushad Ahmed (P.W.3) is a witness to the post-mortem examination. He has stated that the post-mortem on the dead body of the deceased was held by Dr. Suchi Prasad Singh (P.W.7) who had prepared the post-mortem report (Ext.1). He was the observer to the post-mortem examination.

11. Dr. Suchi Prasad Singh (P.W.7) has held the post-mortem on 10.07.2002 at 1.35 p.m. and found the following ante-mortem injuries on the dead body of the deceased:-

(i) One lacerated wound 4" x 3½" x 3" deep on left mid back with area of burn black around wound contains splinters and explosive gun powders in the skin. Blood and blood clots were present.

(ii) One lacerated wound oval in shape having ½" x ½" x ¼" in diameter. Burning and charring blacking on the left ear (one wound of entry).

(iii) One lacerated wound oval in shape having everted margin shape 1" x ½" x ¼" on the right

pectoral area of the face.

In the opinion of the doctor, the cause of death was haemorrhage and shock due to injury nos. (i), (ii) and (iii) caused by fire arm and explosion of gun powder.

12. Pappu Kumar Yadav (P.W.4) and Krishnandan Prasad (P.W.5) are the formal witnesses, who have proved the formal First Information Report (Ext.2) and *fardbeyan* (Ext.3).

13. Ayodha Yadav (P.W.8) is also a formal witness who has proved the inquest report Ext.4

14. Mukim Ansari (P.W.6) is the informant and the son of the deceased. He has stated that on the date and time of occurrence, he was returning from Sono by a motorcycle with his father (deceased) and Diwakar Singh (D.W.1). The motorcycle was driven by the deceased. He was in the middle of his father and Diwakar Singh (D.W.1) on the motorcycle. When they reached near 500 yards before his village Nawada, Sadique Mian shot fire which did not hit anyone. The motorcycle fell down and his father was under the motorcycle. He (P.W.6) and Diwakar Singh (D.W.1) were escaping in the mean time. Jalal Mian exploded bomb on his father which hit in his waist. He has further stated that he returned near his father and requested the appellants not to kill him. Appellants Sadique Mian and Manzoor Mian caught hold of him and told him to go failing which he would also be killed. Sadique Mian fired a shot

which caused injury in the ear of the deceased. Thereafter Islam Mian told that the deceased died and asked the others to escape. When the villagers were approaching, all the accused fled away. His father succumbed to the injuries on the spot. Diwakar (D.W.1) also fled away. With the help of co-villagers, the dead body was brought to his house.

15. It appears from the evidence of P.W.6 that he has made variance from the statement made in the *fardbeyan* and in his examination during the trial.

16. The Investigating Officer has not been examined in this case. Non-examination of the Investigating Officer has caused prejudice to the appellants, as they have not got opportunity to examine the variance of statements of the witnesses during the investigation and the trial. There is no evidence on record to show that the Investigating Officer had visited the place of occurrence and found the splinters, signs of explosion, blood etc. on the place of occurrence. The non-examination of the Investigating Officer makes the case doubtful. Diwakar Singh (D.W.1) who was accompanying the deceased as well as the informant has not supported the prosecution case. He has been examined as D.W.1. He has stated that he was also travelling on the motorcycle which was driven by the deceased. Between the deceased and him, the informant was sitting on the motorcycle. He has further stated that when they were



some distance away from village Nawada, all of a sudden 4-5 persons came out and shot fire on them. The motorcycle fell down and all of them also fell down. The informant and he ran towards the village Nawada and Zainul Mian (deceased) was lying under the motorcycle. After a long gap, both of them (P.W.6 and D.W.1) returned there. Prior to his arrival at the place of occurrence, P.W.6, the son of Zainul Mian returned to the place of occurrence. He saw Zainul Mian in dead condition. He did not identify any of the culprits. He has stated that the appellants are known to him prior to the occurrence. In his cross-examination he has stated that he does not know who are the accused in this case. The deceased was killed in his presence. P.W.6, the son of the deceased was also present with him.

17. It appears that it is admitted position that the deceased, the informant and Diwakar Singh (D.W.1) were travelling by a motorcycle which had been driven by the deceased. After firing, the deceased fell down and was lying under the motorcycle whereas the informant (P.W.6) and Diwakar Singh (D.W.1) fled away towards the village Nawada. It is also admitted that both of them have returned at the place of occurrence. The version of the informant that he saw the appellants making firing and exploding bomb does not appear to be convincing. It is also an admitted position that there is a land dispute between both the parties. The

evidence of P.W.6 does not inspire confidence and is not fit to be relied upon.

18. Considering the facts and circumstances of the case and on perusal of the records, we find that the prosecution has not been able to substantiate its case beyond reasonable doubt. The judgment of conviction and the order of sentence are not fit to be sustained and as such they are set aside. Both the appeals are allowed. The appellants are acquitted of the charges they had been found guilty of. The appellants of Cr. Appeal (DB) No. 112 of 2009 are on bail. They shall stand discharged from the liabilities of their respective bonds. Appellant Jalal Mian of Cr. Appeal (DB) No. 177 of 2009, who is in custody, is directed to be released forthwith if not wanted in any other case.

(Dharnidhar Jha, J.)

(Amaresh Kumar Lal, J.)

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