

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.646 of 2013

[Against the judgment of conviction and order of sentence dated 20th May and 31st May, 2013, respectively passed by the 4th Additional Sessions Judge, Naugachia, in Sessions Trial No.361 of 2010 arising out of Kharik P.S. Case No.17 of 2008]

1. Surya Narayan Mandal, son of late Haribol Mandal, resident of village - Lokmanpur, Police Station - Kharik, District - Bhagalpur

.... Appellant/s

Versus

1. The State of Bihar

.... Respondent/s

With

Criminal Appeal (DB) No. 696 of 2013

[Against the judgment of conviction and order of sentence dated 20th May and 31st May, 2013, respectively passed by the 4th Additional Sessions Judge, Naugachia, in Sessions Trial No.361 of 2010 arising out of Kharik P.S. Case No.17 of 2008]

1. Lalo Mandal, S/O Surya Narayan Mandal, resident of village- Lokmanpur, Police Station- Kharik, District- Bhagalpur.

.... Appellant/s

Versus

1. The State of Bihar

.... Respondent/s

With

Criminal Appeal (DB) No. 712 of 2013

[Against the judgment of conviction and order of sentence dated 20th May and 31st May, 2013, respectively passed by the 4th Additional Sessions Judge, Naugachia, in Sessions Trial No.361 of 2010 arising out of Kharik P.S. Case No.17 of 2008]

1. Bucho Mandal, son of Suraj Narayan Mandal @ Surya Narayan Mandal, R/O village- Lokmanpur, P.S.-Kharik, Distt-Bhagalpur

.... Appellant/s

Versus

1. The State of Bihar

.... Respondent/s

Appearance:

(In CR. APP (DB) No. 646 of 2013)

For the Appellant/s : Mr. Viveka Nand Singh, Advocate

For the Respondent/s : Mr. A. K. Sinha, APP

For the Informant : Mr. Sunil Kumar Singh, Advocate

(In CR. APP (DB) No. 696 of 2013)

For the Appellant/s : Mr. Viveka Nand Singh, Advocate

For the Respondent/s : Mr. S. C. Mishra, APP

For the Informant : Mr. Sunil Kumar Singh, Advocate

(In CR. APP (DB) No. 712 of 2013)

For the Appellant/s : Mr. Viveka Nand Singh, Advocate

For the Respondent/s : Mr. S. N. Prasad, APP

For the Informant : Mr. Sunil Kumar Singh, Advocate

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CORAM: HONOURABLE JUSTICE SMT. ANJANA PRAKASH

&

HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA

ORAL JUDGMENT

(Per: HONOURABLE JUSTICE SMT. ANJANA PRAKASH)

Date: 16-03-2016

1. By the judgment of conviction and order of sentence dated 20th May, 2013, and 31st May, 2013, respectively passed by the 4th Additional Sessions Judge, Naugachia, in Sessions Trial No.361 of 2010 arising out of Kharik P.S. Case No.17 of 2008, all the three Appellants have been convicted under Sections 147, 148, 302/149 Indian Penal Code and sentenced to undergo rigorous imprisonment for life under Section 302/149 Indian Penal Code with fine of ₹5,000/- each and in default of payment of fine to further undergo rigorous imprisonment for six months. Further, Appellant Bucho Mandal has been convicted under Section 27(1) of the Arms Act and sentenced to undergo rigorous imprisonment for three years with fine of ₹5,000/- and in default of payment of fine to further undergo rigorous imprisonment for six months. No separate sentence was

passed under Sections 147/ 148 Indian Penal Code.

2. Case of the prosecution according to Shambhu Mandal (PW 9) is that he had gone to the fields to work there around 2.00 PM and then he saw that the accused persons were chasing his father in course of which he was shot dead by Bucho Mandal and in spite of pleading of his father he was killed by them. The reason for the occurrence was that Satya Narain Mandal (PW 10) and Surya Narayan Mandal (Appellant) were on litigating terms on account of land and there was a Title Suit also pending between them. His father used to look after the land of Satya Narain Mandal (PW 10) on account of which he had been killed. The occurrence was seen by one Shambhu Yadav, who disclosed to him about the same.

From the First Information Report itself, it appears that the Informant has given an ambiguous statement and it is unclear as to whether he had seen the occurrence or he had heard about the occurrence from Shambhu Yadav, who has not been examined in this case.

3. Since we are viewing the credibility of the entire case on the angle of motive, we shall discuss the evidence of witnesses accordingly.

4. The prosecution, in all, examined 12 witnesses out of whom PW 1 (Bado Singh), PW 2 (Indra Deo Mandal), PW 3 (Sita

Ram Sah) and PW 4 (Anil Mandal) did not support the case of the prosecution.

5. PW 10 (Satya Narain Mandal) with whom there was litigation of Appellant, Surya Narayan Mandal, has been examined as hearsay witness and his cousin PW 6 (Upendra Mandal) has deposed as an eye witness. Bambam Mandal (PW 5), son of the deceased is also hearsay, whereas, PW 7 (Manoj Mandal), another son of the deceased, PW 8 (Budhni Devi), daughter of the deceased and PW 9 (Shambhu Mandal), son of the deceased claim to be the eye-witness of the occurrence.

6. PW 11 (Dr. Ashok Kumar Singh) conducted Post Mortem Examination Report, whereas, PW 12 (Kumar Marandi) is the Investigating Officer.

The cause of death according to PW 11 was fire arm injury and he found following injury on the person of the deceased:

1. Wound of entry: 3/4" circular wound with inverted margin on the middle of the frontal bone.
2. Wound of Exit: A lacerated circular wound 2" in diameter lateral to left eye with everted margin,
3. Wound of entry: 3/4" penetrating wound on the left triangle of neck with inverted margin without any charring.
4. Wound of exit: Lacerated penetrating wound 1 1/2" x 1 1/2" with everted margin on the left upper chest back side,
5. Wound of entry: Circular penetrating wound 1/2" diameter on left anterior chest with inverted margin

6. Wound of exit: lacerated wound 1½” x 1” on left side chest back side with everted margin.

Time elapsed since death was with twenty four hours.

It has been argued by the counsel for the Informant that the Post Mortem Examination Report fully corroborates the case of the prosecution as given out by the eye witnesses PWs 6, 7, 8, and 9 which is duly supported two hearsay witnesses PWs 5 and 10 and hence, the Appeals are fit to be dismissed.

7. To discuss the evidence of the witnesses, we will refer to the first eye witness i.e. PW 5 (Bambam Mandal), who was the son of the deceased. He stated that on the date of occurrence at about 2.00 PM, his brother Shambhu Mandal (PW 9) came and told him that his father had been killed by the accused persons whom he names. On hearing this, he went to the field and saw his father dead.

In cross-examination, his attention was drawn to the earlier statement that he had merely stated that his brother had told him that his father had been shot dead. Since PW 9, the Informant, has not stated the fact of disclosure by his brother, evidence of this witness as hearsay witness is not admissible.

8. PW 6 (Upendra Mandal), cousin of Satyna Narain Mandal (PW 10) with whom the Appellant (Surya Narayan Mandal) was on litigating terms, stated that on the date of occurrence while he

was standing in the field, he suddenly saw the accused persons having held the accused with a towel and thereafter Appellant, Bucho Mandal, fired at him on account of which he fell dead.

In cross-examination, he stated that he did not know as to whether the deceased had any enmity with the accused persons. He also stated that he was the first person who had been examined by the police and thereafter the Informant and his two brothers were examined. This appears to be contrary to the prosecution case since it had been initiated on the statement of PW 9 (Shambhu Mandal). His attention was drawn to the earlier statement but it is not relevant since the Investigating Officer was not questioned on the same.

The reason for disbelieving this witness is that he is not named in the First Information Report as one of the persons, who had witnessed the occurrence. This is a serious lapse since the Informant had specifically stated about the presence of one Shambhu Yadav having seen the occurrence and, hence, it was expected that the name of this witness would have also found mention.

9. PW 7 (Manoj Mandal) is another son of the deceased, who also stated that while he was in the field he saw the occurrence as stated by rest of the witnesses.

In cross-examination, he stated that the deceased had never any litigation with the Appellants and that he had informed the



Sarpanch about the occurrence who in turn informed the police. He further stated that he and other two brothers had taken the fields of Satya Narain Mandal (PW 10) on *Batai* and his father used to look after the same. However, there was no document in its regard. In further cross-examination, he asserted that his father did not have any litigation with any one at all. He stated that he had earlier stated to the police that his father was *Bataidar* of Satan Mandal, PW 10, and he and one Surya Narayan Mandal (Appellant) were on litigating terms on account of which his father had been murdered. He further stated that he had seen Satan Mandal, PW 10, in the house of *Sarpanch* and it is after due consultation with him that the case was instituted.

We find it difficult to accept his evidence and reject it for the same reason as PW 6 (Upendra Mandal).

We also note that from his evidence it is clear that there was no reason or motive for the Appellants to have killed his father and the case was instituted after due consultation with Satya Narain Mandal (PW 10), who was on litigating terms with the Appellant, Surya Narayan Mandal.

10. PW 8 (Budhni Devi) is the daughter of the deceased, who stated that while she was working in the field she saw the occurrence and she names all the accused persons with specific

overt act. She also stated that after the occurrence when Satya Narain Mandal, PW 10, came then the case was instituted and that she had gone to the house of *Sarpanch*.

We also reject the eye witness account of this witness since she has also not been named in the First Information Report. She being the sister of the Informant was expected to be named therein.

It is notable from her evidence also that the case was instituted only after Satya Narain Mandal (PW 10) had come to the house of *Sarpanch*, thus, corroborating PW 7 that the case was instituted after due consultation with him.

11. PW 9 (Shambhu Mandal) is the Informant of the case, who supported the facts stated in the First Information Report and that on the date of occurrence the accused persons came upon the fields where his father was working. Thereafter, they tried to drag him away and then Bucho Mandal fired at him. The reason for the occurrence was land dispute between PW 10, Satya Narain Mandal, and Appellant, Surya Narayan Mandal, and his father used to look after the field of Satya Narain Mandal (PW 10). It was for this reason that the occurrence had taken place. Even though the father was the *Bataidar* of the fields of Satya Narain Mandal, but there was no document in this regard.



In cross-examination, he stated that Shambhu Yadav was the first person who gave information about the occurrence and his field was next to the field where the occurrence had taken place. Importantly, this Shambhu Yadav has not been examined and, thus, it confirms the fact that neither the Informant nor any one else was an eye witness and the information was received only from Shambhu Yadav, who has not been produced by the prosecution.

In further cross-examination, he stated that there was no litigation between he deceased and the accused persons but they used to threaten him. However, no *Sanha* or complaint has been instituted in this regard. It was suggested to him that, in fact, he was not an eye witness and it was at the instance of PW 10 (Satya Narain Mandal) that the present case was instituted.

12. PW 10 (Satya Narain Mandal) is the person with whom the Appellant Surya Narain Mandal was on litigating terms. He said that on 12.01.2008, Shambhu Mandal (PW 9) came and told him that the Appellants had shot dead his father.

He stated in his cross-examination that Shambhu Mandal (PW 9), the Informant, had no litigation with the accused persons, but he himself had land litigation with the Appellant Surya Narayan Mandal. There was also a case under Section 379 Indian Penal Code pending between them. He confirms in his further

statement that he was on litigating terms with the three Appellants on account of land and had instituted a case on 06.01.2008 i.e. six days earlier against them for having committed theft of his crops. However, there was no litigation between the present Appellants and the deceased and his sons. It was he who had given information to the police.

Since PW 9, the Informant, has not supported the factum of disclosure about this occurrence to this witness, evidently, this hearsay account is inadmissible in law.

13. The Investigating Officer, Kumar Marandi, (PW 12) stated that on 13.01.2008, the then Officer-in-Charge, Kharik P.S., had instituted the First Information Report. He proves the formal First Information Report as Ext.2. He also proved the *fard-e-bayan* of the Informant as Ext.3. He further stated that he had inspected the place of occurrence which was open field and thereafter examined several witnesses and sent the dead body for Post Mortem Examination.

In cross-examination, he stated that he had received information on a rumour and instituted a Station Diary entry but time was not noted. In further cross-examination, he clarified that it appeared that the Informant was not an eye witness. In fact, Shambhu Yadav had disclosed to him about the occurrence. He had

examined Shambhu Yadav, but he has not been produced. He further stated that the Informant in his further examination stated that when he reached the place of occurrence he found his father dead. In his further cross-examination, he stated that he had examined Manoj Mandal (PW 7), Satya Narain Mandal (PW 10), Budhni Devi (PW 8) on 15.06.2008 i.e. three days after the occurrence.

14. On going through the entire evidence, as stated earlier, we find that motive is important in the facts of the present case. According to the prosecution, PW 10 (Satya Narain Mandal) and Appellant, Surya Narayan Mandal, father of rest of the Appellants, were on litigating terms and because the deceased was Bataidar of Satya Narain Mandal, this occurrence took place. We also find that Umesh Mandal (PW 6), cousin of PW 10 (Satya Narain Mandal) with whom litigation was on, was present near the place of occurrence. The fact that he was not targeted even though he belonged to the same family makes not only the motive doubtful but also that he was an eye witness to the occurrence. We further find that all the witnesses have conceded that at no point in time there was any complaint against the present Appellant with regard to the deceased and suddenly the deceased was targeted in the manner suggested for which there does not appear plausible reason.

15. The revelation by PW 7 (Manoj Mandal) that the

case was instituted after due consultation with Satya Narain Mandal, PW 10, goes to suggest that, in fact, he was the architect of the present case and it is at his instance all his enemies were implicated.

16. We also take note of the fact that even though the Informant himself stated that he had given an ambiguous statement in the *fard-e-bayan* as to whether he was an eye witness or hearsay witness but the Investigating Officer later clarified that the Informant was not an eye witness and, therefore, the very edifice on which the prosecution case is built becomes shaky.

17. Further, the Investigating Officer stated that he examined the eye witnesses PW 7 (Manoj Mandal), PW 8 (Budhni Devi) and PW 10 (Satya Narain Mandal) three days after the occurrence which delay is not explained. The consistent evidence is that PW 10 (Satya Narain Mandal) was present when the police came so there was no reason why he was not examined at the earliest instance along with the rest of eye witnesses. It appears that these witnesses concocted the story of being eye witnesses in order to rope in the present Appellants for the reasons of land dispute.

18. We also find that all the Appellants belong to the same family which gives rise to further suspicion that great pains had been taken to ensure that the entire family is embroiled so as to settle the land dispute.

19. The basis of the *fard-e-bayan*, which was the account of Shambhu Yadav, has been suppressed by the prosecution thus challenging the veracity of the prosecution case making it unreliable.

20. In view of the discussions above, the Appellants are acquitted of the respective charges leveled against them and the impugned judgment of conviction and order of sentence dated 20th May, 2013, and 31st May, 2013, respectively passed by the 4th Additional Sessions Judge, Naugachia, in Sessions Trial No.361 of 2010 arising out of Kharik P.S. Case No.17 of 2008, is hereby set aside.

21. The Appellant, Bucho Mandal, (Cr. Appeal (DB) No.712 of 2013), who is in custody, is directed to be released forthwith, if not required in any other case. The Appellant Surya Narain Mandal (Cr. Appeal (DB) No.646 of 2013), and Lalo Mandal (Cr. Appeal (DB) No.696 of 2013), who are on bail, are discharged from the liabilities of their respective bail bonds.

22. In the result, all the appeals are **allowed**.

(Anjana Prakash, J)

(Rajendra Kumar Mishra, J)

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J.Alam/-

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