

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.1061 of 2011

(Against the Judgment of conviction dated 27.08.2011 and Order of sentence dated 29.08.2011 passed by the Additional Sessions Judge-IV (F.T.C.), Madhepura, in Sessions Trial No.1(B) of 2004.

Kailash Mandal, son of Bilo Mandal, resident of village - Katchira, P.S.- Chausa, District- Madhepura.

Versus Appellant.
The State of Bihar
with Respondent.

Criminal Appeal (DB) No. 962 of 2011

- 1. Dilip Sharma, son of Kokai Sharma, resident of village- Sonbarsa, Tola-Arajpur, Police Station-Chousa, District-Madhepura.
- 2. Paddi Mandal, son of Late Gore Mandal, resident of village-Katchira(Shankar Nagar), Police Station-Chousa, District-Madhepura.

Versus Appellants.
The State of Bihar
with Respondent.

Criminal Appeal (DB) No. 693 of 2006

(Against the Judgment of conviction dated 29.07.2006 and Order of sentence dated 31.07.2006 passed by the 1st Additional Sessions Judge, Madhepura, in Sessions Trial No.01 of 2004/01 A of 2004).

- 1. Md.Ajj, son of Late Md. Rafique.
 - 2. Md. Mustafa, son of Late Md. Mian.
 - 3. Md. Kamal, son of Md. Khuda Bux.
 - 4. Md. Sakur, son of Late Mumtaz Ali.
 - 5. Md. Tasir, son of Late Md. Shekhawat.
 - 6. Md. Khalil, son of Late Md. Rafique.
 - 7. Md. Alimuddin, son of Late Md. Sitabi Mian.
- All residents of village Sonbarsa, Tola-Arajpur, P.S. Chousa, District-Madhepura.

Versus Appellants.

The State of Bihar

.... Respondent.

with

Criminal Appeal (DB) No. 767 of 2006

1. Md. Kailash, son of Md. Panchu.
2. Md. Siraj Alam, son of Md. Hanif.
All residents of village-Sonbarsa, Tola-Arajpur, P.S. Chousa, District-Madhepura.

.... Appellants.

Versus

The State of Bihar

.... Respondent.

Appearance :

(In CR. APP (DB) No. 1061 of 2011):

For the Appellant : M/s. Vikramdeo Singh & Amit Kumar Anand, Advocates.
For the State : Mr. S.C. Mishra, A.P.P.

(In CR. APP (DB) No. 962 of 2011):

For the Appellants : Dr. Sanjay Kumar Singh, Advocate.
For the State : Mr. S.B. Verma, A.P.P.

(In CR. APP (DB) No. 693 of 2006):

For the Appellants : Mr. Ranjay Kumar Singh, Advocate.
For the State : Mr. A.K. Sinha, A.P.P.

(In CR. APP (DB) No. 767 of 2006):

For the Appellants : M/s. Vikramdeo Singh & Binod Kumar, Advocates.
For the State : Mr. S.N. Prasad, A.P.P.

CORAM: HONOURABLE JUSTICE SMT. ANJANA PRAKASH

and

HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA

ORAL JUDGMENT

(Per: HONOURABLE JUSTICE SMT. ANJANA PRAKASH)

Date: 02-02-2016

The Appellants of Criminal Appeal (DB) Nos.693 of 2006 and 767 of 2006 have been convicted under Sections 302/34 of the Indian Penal Code and sentenced to rigorous imprisonment for life and fine of Rs.10,000/-, in default of which, rigorous imprisonment for one year and under Section 27 of the Arms Act and sentenced to rigorous imprisonment for seven years and fine of Rs.5000/-, in default of which,

rigorous imprisonment for six months vide Judgment of conviction dated 29.07.2006 and Order of sentence dated 31.07.2006 passed by the 1st Additional Sessions Judge, Madhepura, in Sessions Trial No.01 of 2004/01A of 2004, whereas Appellants of Criminal Appeal (DB) Nos.1061 of 2011 and 962 of 2011 have been convicted under Sections 302/34 of the Indian Penal Code and sentenced to rigorous imprisonment for life and fine of Rs.5000/-, in default of which, six months rigorous imprisonment and under Section 27 of the Arms Act and sentenced to rigorous imprisonment for two years and fine of Rs.1000/-, in default of which, six months rigorous imprisonment vide Judgment of conviction dated 27.08.2011 and Order of sentence dated 29.08.2011 passed by the Additional Sessions Judge-IV (F.T.C.), Madhepura, in Sessions Trial No.1(B) of 2004.

2. The case of the prosecution, according to the Informant Kismat Ali (P.W.5) and (P.W.6) in Sessions Trials respectively is that on 30.09.2000 at about 07.35 P.M. when he had gone to ease himself at the field, he suddenly heard sounds of firing so he came home and saw about 30-40 persons in a crowd in which he identified 17 persons including the present Appellants. As soon as they came, they started to ask Mehndi Hussain whereabouts of Kismat Ali and when they did not get satisfactory reply, three persons were shot at. Whereas Md. Maniruddin and Md. Mehndi Hussain died immediately, Md. Sahnawaj died after he

was removed to the Government Hospital. He stated that the reasons for the occurrence was that they used to protest about the anti-social activities of the accused which was not liked by them and, hence, the present occurrence took place. This Fardbeyan was reportedly given at the hospital on the same day at 09.35 P.M. and the F.I.R. was instituted on the next day but received in the court only on 04.10.2000.

3. In both the trials, the prosecution examined 9 witnesses and 8 witnesses respectively.

4. Md. Mustaque deposed as prosecution witness no.1 in both the trials. P.W.2 Md. Illias Ali was examined as P.W.4 in the subsequent trial whereas P.W.3 Md. Gyasuddin was examined as P.W.2 and P.W.4 Md. Samsul Ali was examined as P.W.3, P.W.5 Md. Nazmul was not examined and P.W.6, Kismat Ali, the Informant, was examined as P.W.5, P.W.7 Rajendra Baitha, a formal police official, was examined as P.W.7 whereas Dr. Mehi Lal Singh was examined as P.W.8 in both the trials. P.W.9 Harendra Prasad Choudhary, the Investigating Officer, was examined as P.W.9 and P.W.6 respectively.

5. After having gone through the evidence of the witnesses, we find that they have more or less repeated and completely consistent on all material particulars.

6. P.W.1 Md. Mustaque stated that on the date of occurrence at about 7.30 P.M., while he was at his home, he heard the sounds of

firing on which he came to the house of Kishmat Ali and in the light of lantern, he saw 50-60 persons variously armed having come to his house. He hide himself in the paddy field and saw that 13 persons were looking for the informant and six of them, i.e., Md. Siraj, Kailash Mandal, Md. Kailash, Md. Kamli, Md. Mustafa and Md. Aziz abused Mehndi Hussain and fired at him. The firing hit Md. Manir, Md. Mehndi Hussain, and Md. Sahanawaz. The accused persons then went away through the gate. He further stated that Mehndi Hussain and Md. Manir died then and there, whereas Sahnawaz died at the hospital. Thereafter, Police came and seized blood-stained earth on which he also singed as a witness. From the cross-examination, it appears that his house was situated near the place of occurrence and he knew the topography of the area. He explained as to from where he had seen the occurrence, hiding from the accused as also their identification in light of lantern. He explained that all the 13 persons, whom he identified, were the co-villagers and about half an hour after the occurrence, he had seen the police at the door of the Informant.

7. P.W.2 Md. Illias Ali stated that while he was inside his house and his father Md. Mehndi Hussain, brother Md. Maniruddin and nephew Md. Sahnawaz Alam were sitting and chatting at the door, where a lantern was burning, he heard some sounds of firing and he saw from the window a number of persons, including the present Appellants. He then stated that Kailash Mandal started to look for his brother Kismat Ali,

the Informant, and on not getting a suitable reply, six persons fired at his brother. They then fired also at his father and nephew and started to enter inside the verandah, but he ran away scaling the wall. In ten minutes, the villagers gathered at the place of occurrence and after that the police came and prepared the Inquest Report, which he signed as Ext.1. In cross-examination, he explained that the place of occurrence was heavily populated, but most of the neighbours were not witnesses. He also explained the topography of the place. He stated that it was sunset time and the three deceased was sitting at the door and talking to each other, when the occurrence took place and lantern was lit over their heads. He stated that they reached the hospital around quarter past 09.00 along with injured Sahnawaz and the police Station and the hospital were adjacent to each other.

8. P.W. 3 Md. Gyasuddin, the next eye-witness, stated that he was sitting in his room, whereas his father deceased Mehndi Hussain, brother Md. Maniruddin and others were sitting and talking to each other, where a lantern was burning. Just then his nephew Sahnawaz came looking for the Informant, who had gone to ease himself, so he sat there on a chair himself. He then saw from the window 30-40 persons variously armed having come to his door who started firing, in which he identified the present Appellants. They started to look for Kishmat Ali, his brother, and when they did not get a satisfactory reply, six of the

Appellants fired due to which his father and brother died immediately, whereas Sahnawaz was injured. When the accused persons started to come inside the door, he ran away from the court yard. He stated that Sahnawaz was rushed to the hospital, but died there. In cross-examination, he stated that Appellants Ajij and Khalil were brothers and there was no previous enmity between them. There was no enmity between the three accused persons and himself. A number of questions were put to him with regard to his relationship with accused persons in the village but that is of no relevance. He was also asked to explain where exactly lantern was lit. It was suggested to him, in fact, they had previously helped one group of anti-social which had caused grievance to another group operating in the same area.

9. P.W.4 Md. Samsul Ali, the next eye witness, stated that while he was at his door listening the radio, he saw 30-40 persons coming from the west to the door of Mehndi. He identified 13 persons including the Appellants who all were variously armed. Thereafter, Kailash Mandal, asked Mehndi the whereabouts of Kismat, the Informant, at which he replied he did not know as to where he had gone then Kailash Mandal, Kamaluddihn, Kailash Mian, Sirajuddin, Ajij Mian and Mohd. Mustafa started firing indiscriminately at which Mehndi Hussain, Maniruddin and his son Md. Sahnawaz was injured and within 5 minutes, the occurrence had taken place. He also stated that at that time, lantern

was burning at the door. In cross examination, he stated that the inquest report was prepared in his presence and he identified his signature as Ext.1/1. He stated that a few days back, Sirajuddin and his nephew Khurshid alias Bahadur had been arrested by the Dy.S.P. and remanded to jail and on coming out they had threatened Kismat Ali of dire consequences. He also stated that Kismat Ali, the Informant, used to help the Government Agency. In cross examination, he stated that he had gone to the hospital alongwith his injured son and returned after his death. His attention was drawn to the earlier statement that he had allegedly stated that he had seen the Appellants fleeing away and not that the lantern was burning at the door. He was also asked to explain topography of the area from which it appears that he lived very close to the place of occurrence and the area was heavily populated. He also stated that Kailash did not like the fact that Kismat used to help others. It was suggested to him that Kailash Mandal was on inimical term with the Informant and he belonged to the group of Awadhesh to which he denied.

10. P.W.5 Md. Nazmul is a formal witness. He proved his signature on the inquest report of the deceased Shahnawaz. There is nothing which is of importance in his cross examination.

11. P.W.6 Kismat Ali, the Informant, once again repeated what he had stated in the First Information Report that while he had gone to ease himself, he heard sounds of firing and then he saw the accused

persons variously armed coming, out of which he identified 13 persons including the present Appellants firing at the deceased. He stated that he had hidden himself and seen the occurrence from there. He proves his signature on the Fardbeyan, which is Ext.2 and also identifies all the 12 present Appellants. He was also asked to explain the place of occurrence which he described and it appears that the houses were situated in a narrow lane with fields nearby. In cross examination, he stated that he did not know anything about a case under the B.T. Act between the father of Appellant Md. Kamal and Md. Kudrat with his father Mehndi Hussain. He stated that apart from him having been threatened by the accused persons, there was no previous enmity. He was put several questions with regard to the previous enmity, all of which, he replied in the negative. His attention was drawn to the earlier statement that he had not stated about the lantern burning at the place of occurrence.

12. P.W.7 Rajendra Baitha is a formal police official, who merely submitted the charge-sheet.

13. P.W.8 is Dr. Mehi Lal Singh, who conducted the post-mortem of all the three deceased.

He found the following ante mortem injuries on the person of Md. Maniruddin:

- (i). Wound of Entry – Lacerated, circular 1/2” in diameter on the right side chest with inverted dark margins. It pierced left lung, right lung and in heart and exited on the

left side chest with lacerated and circular opening 3/4" diameter with everted margins.

- (ii). Wound of Entry – Lacerated, circular 1/2" in diameter on the right side abdomen with inverted and dark margins. It exited on the left side back with lacerated and everted and round opening, piercing 3/4" in diameter, piercing liver and large intestine.
- (iii). Wound Entry – Lacerated, circular 1/2" in diameter on the right side lower abdomen with inverted dark margins. It pierced the bladder, left hipbone on the backside with lacerated and round opening 3/4" in diameter with everted margins.

He found the following injuries on the person of Shahnawaz:

- (i). Wound of Entry – 1/2" in diameter on in front part of the right upper area, it pierced and caused fracture of his right upper arm bone and exited posteriorly with a opening 3/4" in diameter, An injury of similar nature on the right forearm below the elbow.
- (ii). Spotted pellet injuries 4 in number on the left side abdomen. It pierced the abdominal wall.
- (iii). Wound of Entry – Lacerated wound, 3/4" in diameter on the upper part of the right thigh. It pierced the right femoral artery and veins caused fracture of the right femer and exited in the right buttock with everted margins 1" in diameter. Margins of the wound of entry were dark and inverted.
- (iv). Wound of Entry – Lacerated wound 1/2" in diameter with dark and inverted margins on the front part of the

middle right thigh. It exited on the back of the right thigh and caused fracture of the right femer.

He found the following injuries found on the person of Md. Mehdi Hussain:

- (i). Lacerated wound 1" X 1/2"X bone deep on the left chick caused by a hard blunt substance.
- (ii). Lacerated wound 2" X 1/2" on the back of the left elbow caused by hand blunt substance.
- (iii). Wound of Entry – Lacerated wound with dark and inverted margins 1/2" in diameter on the right side chest at the level of 3rd inter costal space. It pierced the right lung and exited with a lacerated wound opening 3/4" in diameter on the right side back with everted margins caused by a firearm.
- (iv). Wound of Entry – Lacerated wound with dark and inverted margins 1/2" in diameter on the left side lower abdomen. It pierced the large and small intestines, left hipbone and exited out on the left buttock with lacerated and everted margins 3/4" in diameter caused by a firearm.

He stated that all the three deceased died of firearm injuries. In cross examination, he stated that the firearm injuries may be possible from the distance of three feet and there was no charring or smoke mark on any of the firearm injuries.

14. P.W.9 Harendra Prasad Choudhary is the Investigating

Officer who stated that on 30.09.2000 at 9.20 P.M. he received information at which he went to the Chousa Government Hospital and found Sahnawaz dead and recorded the Fardbeyan of Kishmat Ali on which he put his signature as Ext.2. Thereafter, he prepared the Inquest Report of Shahnawaz, which is Ext. 4, as also seized the empty cartridges at the place of occurrence, which is marked Ext.5. The rest of the Inquest Reports are Exts.4/a and 4/b. In cross-examination, he stated that he had not seen any window in the house, nor he find any lantern or earthen lamp at the place of occurrence. We find that his attention was drawn to the previous statements of the Informant Kishmat Ali (P.W.6) and Md. Samsul Ali (P.W.4) on very minor points. He mentions about the presence of Kailash operating in the area.

15. It is submitted on behalf of the Appellants that the First Information Report has reached the court very late which casts a serious doubt about the veracity of the prosecution case. However, we find that when the Investigating Officer was examined, he was not asked to explain regarding the same, hence, we are not inclined to give much value to this delay, specially since Fardbeyan appears to have been recorded within three hours of the alleged occurrence. We also find that P.W.1, P.W.2, P.W.3, P.W.4 and P.W.6 have consistently stated as to how the accused persons came to the place of occurrence, out of which the present Appellants were identified and six of them fired at the deceased, which is

corroborated by objective evidence. As such there appears no scope for interference in the conviction of the Appellants, even though, we are disturbed by the fact that the prosecution has not given reason as to why the occurrence had taken place, however, since motive has no relevance in a case of direct evidence, we would not like to give much importance to it. Hence, finding no merit in these appeals, they are dismissed.

16. It appears that Appellant Kailash Mandal {in Criminal (DB) No.1061 of 2011} is already in custody whereas the other Appellants of all the other Criminal Appeals are on bail. Therefore, their bail bonds are cancelled and they are directed to surrender before the court below forthwith to serve out their remaining period of sentences.

(Anjana Prakash, J)

(Rajendra Kumar Mishra, J)

**Pradeep Srivastava/Manish Kumar/
A.F.R.**

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