

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.971 of 2011

(Against the Judgment of conviction dated 25.08.2011 and Order of sentence dated 05.09.2011 passed by Additional District and Sessions Judge, F.T. C.-III, Muzaffarpur, in Sessions Trial Case No. 795 of 2009).

Rama Kant Singh, S/O Tuntun Singh, R/O Vill.-Panapur, P.S.-Minapur, Distt.-Muzaffarpur.

The State of Bihar

Versus

.... .... Appellant/s

with

.... .... Respondent/s

Criminal Appeal (DB) No. 1055 of 2011

Laloo Mian @ Aslam Mian, S/O Late Suleman Mian, R/O Vill. Piprasha, P.S. Minapur, District - Muzaffarpur

The State of Bihar

Versus

.... .... Appellant/s

.... .... Respondent/s

Appearance :  
(In CR. APP (DB) No. 971 of 2011 and CR. APP (DB) No. 1055 of 2011)  
For the Appellant/s : Mr. Subodh Kumar Jha, Advocate.  
Mr. Bidhan Chandra Jha, Advocate.  
For the Informant : Mr. Neeraj Kumar Sanid, Advocate.  
For the State : Ms. Shashi Bala Verma, APP  
Mr. S.C. Mishra, APP.

CORAM: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH

and

HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH)

Date: 22-08-2016

Heard learned counsel for the Appellants, learned

counsel for the informant and learned counsel for the State.

2. The Appellants of both appeals have been convicted under Section 302/34 of the Indian Penal Code, Section 27 of the Arms Act and Section 3 of the Explosive Substance Act vide Judgment of conviction, dated 25.08.2011 and Order of sentence, dated 05.09.2011 passed by the Additional Sessions Judge, F.T.C. No. III, Muzaffarpur, in Sessions Trial No. 795 of 2009. For the offence under Section 302/34 of the Indian Penal Code, the appellants have been sentenced to undergo Rigorous Imprisonment for life, not less than 20 years. For the offence under Section 27 of the Arms Act, the appellants have been sentenced to undergo Rigorous Imprisonment for five years. For the offence under Section 3 of the Explosive Substance Act, the appellants have been sentenced to undergo Rigorous Imprisonment for 3 years. However, all the sentences are directed to run concurrently.

3. The prosecution case as set out in the Fradbeyan (Ext.5) of Shahjahan Khatoon (P.W.5), wife of the deceased, Md. Afsar Alam, resident of village Pipraha, P.S. Meenapur (Panapur O.P.) recorded, on 27.11.2008, at 6.30 PM, by Sri Daya Nand Prasad (P.W.10) at her residence is to the effect that in the evening of 27.11.2008 at about 5.45 P.M., she was standing at the door of her house and her husband was sitting on a chair in front of Verandah



(Baithak) near about the brick road (Kharanja) and her labourer Asharfi Paswan (P.W.3) was also sitting near her husband. In the meantime, accused/appellants, Lalu Mian and Rama Kant Singh came from the eastern side and entered into altercation with her husband. The appellant, Lalu Mian was saying that her husband had done a lot of Panchayat and today he would teach him a lesson. Soon thereafter, both the accused/appellants fired at her husband with their pistols, injuring him, who fell from his chair. As informant raised alarm, Asharfi Paswan (P.W.3) fled away, whereas accused/appellants also fled hurling bombs in order to terrorize the people. She heard sound of three bombs. After sometime, the police came but by that time, her husband had died. The occurrence was witnessed by Md. Mosin (P.W.4), whose house is adjacent south and some others, who had also witnessed the occurrence and, on enquiry, would narrate the incident. The occurrence took place as Lalu Mian, was held guilty and punishment in Panchayat held by husband of the informant for misbehaving with a girl three to four years ago. Because of the punishment, Lalu Mian carried grievance against her husband and used to threaten him time and again. The informant further alleged that Lalu Mian in league with Rama Kant Singh killed her husband by firing upon him.

4. In support of its case, the prosecution examined



altogether 11 witnesses. Out of 11 witnesses, P.W. 4, Md. Mosim has turned hostile whereas P.W. 8, Sita Ram Choudhary, is a formal witness and has only submitted the charge sheet against the accused/appellants in the court. P.W.11, Rani Bhushan Srivastava, is also a formal witness, who proved the signature of S.N. Yadav, Sr. Assistant Scientist and Shayam Bihar Upadhayay, Director In-charge of F.S.L as Exts. 6 and 7. P.W.9, Md. Tajuddin, is a formal witness, who put his signature on the seizure list, which proved as Ext.4.

5. P.W.1, Rehana Khatoon, who is the niece of the informant, stated that, at about 5 to 5.30 PM, on 27.11.2008, when she was at her Maika and was serving food to her father in Dalan, she heard sound of altercations, firing and explosions of bombs. She immediately came out and saw the appellant, Lalu Mian and one more person fleeing away holding pistols in their hand and also hurling bombs. At the relevant time, her brother Md. Mosim (P.W.4) was playing at the door, who also disclosed that Lalu Mian and Rama Kant Singh had shot fire at Afsar Alam. When she reached near him, she found Afsar Alam dead. She too stated that earlier for his misbehavior with a girl, the accused/appellant, Lalu Mian was punished by the deceased. She recognized both the accused persons present in the Court.

In cross-examination, she again confirmed that her



brother was present at the time of occurrence, who also disclosed that Lalu Mian and Rama Kant had shot at the deceased and he saw both the appellants Lalu Mian and Rama Kant Singh fleeing from the place of occurrence, while hurling bombs. She stated that the deceased, Afsar Alam happens to be the grand father in relationship and that she was not present at the time of firing, rather she saw the accused persons fleeing away.

It would appear from her evidence that P.W.1 is not an eye witness to the firing upon the deceased, rather as per her versions she stated that she saw the accused/appellants fleeing after the incident holding pistols in their hands while hurling bombs.

**6.** P.W.2, Ansar Alam, is the brother of deceased. He stated in his evidence that occurrence took place one and a half year ago, between 5.30 PM to 6 PM, when he was at his house. He heard sound of two firings and three explosions of bombs. On hearing the sound, he came out from his house and saw two persons, namely, Lalu Mian and Rama Kant Singh fleeing away. Thereafter, he came to the door of Afsar Alam and saw blood oozing from the head of his brother, who was lying dead on the ground. His sister-in-law had stated that Rama Kant Singh and Lalu Mian after killing him, had fled away. He recognized both the accused persons present in the Court.

In cross-examination, he had stated before the

police that he had seen two persons fleeing away but had not disclosed their names. He further stated that he had not seen the occurrence and that the deceased was his own brother.

It appears from the evidence of this witness that he had only seen two persons fleeing away from the place of occurrence after hearing the sound of firing and explosion of bombs, but had not disclosed their names.

7. P.W.3, Asharfi Paswan, is a labourer of the informant (P.W.3). He stated that at the time of occurrence, he was present at his door. On hearing sound of firing and explosion of bombs, he went to the place of occurrence and saw the deceased fallen on the ground because of injury. However, he did not see as to who fired upon the deceased. While the witness has not been declared hostile, but the prosecution has drawn his attention to the earlier statement, where he stated that he saw the accused/appellants having shot at the deceased, which he denied.

8. P.W.5, Shahjahan Khatoon, is the wife of the deceased and the informant of the case. She stated that occurrence took place, on 27.11.2008, at 5.30 PM. At the relevant time, she was at her house and her husband was sitting 10 hands just outside the Dalan and a labourer, Asharfi Paswan (P.W.3) was also sitting near him. In the meantime, Lalu Mian and Rama Kant Singh came and



started altercations with her husband. In course of altercations, both fired at her husband, who on account of injury fell from chair and died. After firing, the accused/appellants fled, hurling three bombs. The cause of occurrence is that appellants misbehaved with a village girl, for which, a panchayat was held, in which, her husband punished the appellants. Daroga ji recorded her statement, on which, she put her signature, proved as Ext.1. Nasir Ahmad had put his signature on the Fradbeyan as witness and she proved the same as Ext.2. She recognized both accused persons present in the Court.

In cross-examination, she stated that both the appellants, namely, Lalu Mian and Rama Kant Singh are co-villagers. She stated that both the appellants misbehaved with a girl, namely, Afsana Khatoon, about 4 to 5 years back, for which, a Panchayat was held at the house of victim girl. She further stated that Darago Ji came at the place of occurrence after 10 minutes and took her husband on Jeep to the hospital in order to save his life and again he came at 7 PM and recorded her statement. She is unable to state whether the Daroga Ji had seized empty cartridges. She stated that blood had spilled on the ground from the wounds of her husband.

It would appear from her evidence that P.W.5 (informant) is an eye witness to the occurrence and has supported the prosecution case both in examination-in-chief and cross-examination

to the effect that Lalu Mian and Rama Kant Singh shot at her husband by pistols and flew, hurling bombs.

9. P.W.6, Md. Muktar Ansari, is hearsay witness, he stated in his evidence that one Md. Nasir informed him that Md. Afsar Alam had sustained firearm injuries, on which, he came to the door of Md. Afsar and found firearm injuries on her husband. At that time, the deceased, his wife and villagers were also present. The deceased's wife told him that Lalu Mian and Rama Kant Singh had fired at him. He had reached the place of occurrence, after the incident. He also confirmed that Rama Kant Singh and Lalu Mian are criminal minded and there was enmity between the deceased and the appellants. He recognized both appellants present in the Court.

It would appear from the evidence of this witness that he is not an eye witness to the occurrence, rather he reached the place of occurrence after 4 to 5 minutes of the crime.

10. P.W. 7, Dr. Bipin Kumar, was posted as tutor in Department of F.M.T., S.K.M.C.H., Muzaffarpur. On the same date, at 11.35 A.M., he conducted the Post-Mortem Examination of the dead body of Md. Afsar Alam and found the following injuries:-

I. One oval wound 1/6" in diameter with inverted margin and burning of margin was found over right lateral side of neck. 3"

below lobule of right ear, entry wound of firearm.

II. One oval wound  $\frac{1}{3}$ " in diameter with everted margin was found over left upper part of face.  $\frac{1}{2}$ " lateral to left eye, exit wound of firearm on dissection. Injury No. 1 was found continuous to wound no. 2 with laceration of neck muscle larynx, trachea, pharynx and oesphagous and fracture of left facial bones. Direction of wound was right to left and below upward.

III. One oval wound upper part of left and forearm laterally with inverted margin  $1\frac{1}{2}$ "x muscle deep and on dissection one bullet was recovered from medial side of upper part of left of forearm. After proper sealing bullet is being handed over to Chaukidar.

The deceased died due to shock and haemorrhage as a result of above mentioned injuries caused by firearm. He further pointed out that time since death with 12 to 24 hours.



**11.** P.W.10, Daya Nand Prasad, is the Investigating Officer of the case and on 27.11.2008, he was in-charge of Out Post Panapur under the jurisdiction of Meenapur Police Station. On that day, he got telephonic information from Pappu Patel (not examined) that firing is taking place in the village Piparaha near the house of Bhukha Mian. On receiving the news, he reached village Pipraha and recorded the Fradbeyan of Shahjahan Khatoon (P.W.5) and took her signature on the same, which he proved as Ext.5. Thereafter, he forwarded the Fradbeyan to Meenapur Police Station and took over the charge of investigation himself. In course of investigation, he inspected the place of occurrence and seized container of Ratna Chaap Jafrani Pati No. 300/- as well as Sutri, from which, emitted fresh smell and prepared seizure list of the articles, which was signed by the witnesses. The place of occurrence is open space in front of gate of Baithaka of deceased, Afsar Alam, at village Pipraha. At that time, Asharfi Paswan (P.W.3) was sitting near the deceased (Afsar Alam). He was informed that Lalu Mian and Rama Kant Singh had shot the deceased there, where after they fled hurling bombs. At the place of occurrence, he found blood stained soils. The said, Afsar Alam, was sent for medical treatment in injured condition but was found dead. He recorded the statement of Md. Mosim (P.W.4), Anwarul Haquem (not examined) and Asharfi Paswan(P.W.3), where after, he went to



the hospital, where he prepared the inquest report of the deceased and sent the dead body for Post-Mortem Examination. He again came to the place of occurrence and recorded the statement of Md. Anish Alam (not examined) Md. Anwar Alam (not examined) and Rehana Khatoon (P.W.1). He stated that accused persons were found absconding in course of raid. He received Post-Mortem Report and on 26.12.2008, handed over the charge to Sudhir Kumar. He stated that he recorded the information given by Pappu Patel in the station diary. He further stated that he entered the entire information given by Papu Patel about the incident in the station diary. In course of inspection, he found blood stain soils at the place of occurrence, but did not prepare any seizure list of it. He further stated that he had mentioned in details the respective boundaries of the place of occurrence.

**12.** Learned counsel appearing for the appellants submits that there is no eye witness to the occurrence. The F.I.R. has been lodged, after due deliberations. He submits that P.Ws. 3 and 4, who are said to be an eye witness to the occurrence, have not supported the prosecution case. Even the informant's version is full of infirmities and not free from doubt. The Investigating Officer had not seized the blood stain soils from the place of occurrence, even the chair, on which, the deceased was sitting at the time of occurrence, was not found at the spot. The sanction order, which has been



exhibited as Ext.8 is accorded under Section 165 of the Evidence Act, which is a wrong provision and as such, the same cannot be said to be duly proved rendering the conviction and sentence, under Section 3 of the Explosive Substances Act, illegal and unsustainable in law. Furthermore, prior to recording of the fardbeyan at 6.30 P.M., the statement of informant, P.W. 2 and P.W. 3 were taken at 6.15 P.M.

**13.** On the other hand, learned counsel appearing for the State as well as informant submits that prosecution has proved its case beyond all reasonable doubts. The Informant (P.W.5) has fully supported the prosecution case stating that both appellants shot at her husband, which caused his death. The prosecution case as stated by the informant (P.W.5) in Fardbeyan as well as in her evidence, stand corroborated by the medical evidence. Furthermore, P.W.1, Rehana Khatoon, has corroborated the prosecution case to the extent that she saw both the appellants, fleeing away just after the occurrence.

**14.** From the discussions made and the evidence as adduced above, it is evident that P.W.5 has fully supported the prosecution case. She stated in her evidence that on 27.11.2008, both appellants came in front of her Dalan and shot at her husband by pistols, on account of which, he fell and subsequently died. The Doctor (P.W.7) has stated in his evidence that he found two firearm



injuries on the person of the deceased, which was the cause of his death. Further, P.Ws. 1 and 2 are corroborative witnesses. They stated that after hearing sound of firing in the evening of the fateful day at about 5.30 P.M., they came out from their house and saw the appellants hurling bombs and fleeing with pistols in their hands. All the witnesses namely the informant (P.W.5), her niece (P.W.1), the labourer (P.W.3) and P.W.2 are consistent in their evidence about time and place of occurrence. P.W. 5 and P.W.1 have fully supported the manner of occurrence. The Fardbeyan was recorded by P.W.10 without delay at 6.30 P.M. followed by recording of statement of witnesses soon thereafter. As such, we are of the considered view that prosecution has been able to prove the case against the appellants, beyond all reasonable doubts under Section 302/34 of the Indian penal Code.

The submission of defence that there are discrepancies with respect to the timings of recording of statement of P.W.2 and P.W.3 is misplaced and devoid of merit.

15. As far as conviction under Section 3 of the Explosive Substances Act is concerned, the same is not sustainable in law. We agree with the submissions made by learned counsel for the appellants that the sanction order has not been proved properly, though formally marked as Ext.8, as the same has been accorded

under Section 165 of the Evidence Act, which deals with entirely different aspects. As such, the conviction and sentence imposed upon the appellants, under Section 3 of the Explosive Substances Act, is not sustainable in law and the same is, accordingly, set aside.

Coming to the sentence part, the trial court has sentenced the appellants to life imprisonment which would not be less than 20 years, under Section 302/34 of the Indian Penal Code. We find the sentence to be unreasonable as no special circumstance or any special reason has been assigned by the Trial Court for sentencing the appellants to 20 years of conviction.

**16.** Accordingly, these appeals are partly allowed. The appellants are acquitted of the charge under Section 3 of the Explosive Substances Act and the sentence imposed upon the appellants, under Section 302/34 of the Indian Penal Code, is modified from 20 years to life imprisonment. The judgment of conviction, dated 25.08.2011 and order of sentence, dated 05.09.2011 passed in Sessions Trial no. 795 of 2009 are confirmed with modification as indicated above.

**(Samarendra Pratap Singh, J)**

**(Rajendra Kumar Mishra, J)**

Bhardwaj/- /NAFR

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