

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.973 of 2006

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{Against the Judgment of conviction dated 26.09.2006 and Order of sentence dated 27.09.2006 passed in Sessions Trial No.189 of 2001 by the court of the Additional Sessions Judge, Fast Track Court No.III, Araria}.

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1. Md. Rayesuddin, son of Late Abdul Quadir.
2. Md. Zakir, son of Late Abbas.
3. Md. Afaq, son of Late Md. Ishaque.
4. Md. Pasha alias Mustafa alias Md. Mustafa alias Pasha, son of Md. Suleman.
All resident of village-Prem Nagar, Police Station-Araria, District-Araria.
... .. Appellants.

Versus

The State of Bihar
... .. Respondent.

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with

Criminal Appeal (DB) No. 966 of 2006

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Md. Wali Ahmad, son of Md. Samsddin, resident of village-Prem Nagar, Police Station-Araria, District-Araria.

... .. Appellant.

Versus

The State of Bihar
... .. Respondent.

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with

Criminal Appeal (DB) No. 1076 of 2006

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1. Md.Niaz, son of Md. Kalim.
2. Md. Nazbool, son of Late Md. Hafiz.
3. Md. Wasique, son of Samsuddin.
4. Md. Riyaz, son of Ainul.
5. Md. Kasim, son of Late Sakir.
All are resident of village-Prem Nagar, Police Station-Araria, District-Araria.

... .. Appellants.

Versus

The State of Bihar
... .. Respondent.

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Appearance :

(In Criminal Appeal (DB) No. 973 of 2006):

For the Appellants : Mr. Mrigank Mauli, Advocate.
Mr. Sanjay Kumar Sharma, Advocate.
Mr. Prince Kumar Mishra, Advocate.
Mr. Saket, Advocate.



Mr. Kashayap Kvashal, Advocate.
Mr. Uday Bhanu Roy, Advocate.
For the State : Mr. Satyanarain Prasad, A.P.P.
(In Criminal Appeal (DB) No. 966 of 2006):
For the Appellant : Mr. Ajay Kumar Thakur, Advocate.
Mr. Ramesh Kumar Singh, Advocate.
For the State : Mr. Shiwesh Chandra Mishra, A.P.P.
(In Criminal Appeal (DB) No. 1076 of 2006):
For the Appellants : Mr. Ajay Kumar Thakur, Advocate.
Mr. Ramesh Kumar Singh, Advocate.
For the State : Mr. Dilip Kumar Sinha, A.P.P.

CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA

and

HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA)

Date : 31-10-2018

The aforesaid criminal appeals have been preferred against the Judgment of conviction dated 26.09.2006 and Order of sentence dated 27.09.2006 passed in Sessions Trial No.189 of 2001 by the court of the Additional Sessions Judge, Fast Track Court No.III, Araria, therefore, the aforesaid criminal appeals have been heard together and are being disposed of by this common Judgment.

2. By the aforesaid Judgment and Order, the appellant Md. Wali Ahmad has been convicted under Section 302 of the Indian Penal Code and Section 27 of the Arms Act and, accordingly, sentenced to undergo imprisonment for life for the offence under Section 302 of the Indian Penal Code and rigorous imprisonment for seven years for the offence under



Section 27 of the Arms Act, whereas the remaining appellants have been convicted under Section 302/149 of the Indian Penal Code and, accordingly, sentenced to undergo life imprisonment for the offence under Section 302/149 of the Indian Penal Code. Further, the appellants Md. Afaque and Md. Pasha have been convicted under Section 27 of the Arms Act and, accordingly, sentenced to undergo rigorous imprisonment for seven years for the offence under the aforesaid Section. All the appellants have also been imposed fine of Rs.3000/- for their respective conviction and, in default of payment of amount of fine, further imprisonment of one year. However, all the sentences were ordered to run concurrently.

3. In brief, the prosecution case is that Md. Ayazuddin (P.W.9) gave his fardbeyan on 17.06.1999 at 11.30 P.M. at his door in village-Prem Nagar before A.S.I. Umashankar Chaudhary (P.W.13) of R.S.O.P., Araria, to the effect that while he along with his family members, after taking the dinner at about 09.30 P.M. on 17.06.1999, was in the process of sleeping, at that time, the appellants Md. Mustafa alias Pasha, Md. Afaque, Md. Zakir, Md. Wali, Md. Wasique, Md. Nazbool, Md. Riyaz, Md. Rayesuddin, Md. Kasim, Md. Niaz and one Sk. Samsuddin alongwith 25-30 unknown having



bhala, farsa and three-nut entered in the courtyard of his elder brother Md. Idrish. On the point of three-nut, the appellants Md. Afaq and Md. Pasha ordered his elder brother Idrish, who was sitting in the courtyard, to keep silent and made query about him (Wakil). His sister-in-law Bibi Noorsadi, seeing the appellants and others, fled away from there and came near his house and told that the appellants and others are searching to him (Wakil). After hearing the statement of Bibi Noorsadi, his mother Bibi Julekha, aged about 55 years, proceeded towards door from the courtyard and he also proceeded behind his mother towards door, where lantern was burning. In the light of lantern, he saw that the appellants Md. Afaq, Md. Pasha and Md. Wali having three-nut in their hands were proceeding towards his door. On seeing his mother Bibi Julekha, they asked about him (Wakil), saying that he will not be spared alive. In the meantime, they saw him, on which the appellants Md. Wali and Md. Afaq fired through three-nut upon him but his mother Bibi Julekha turned back to save him and firing of Md. Wali hit his mother, who fell down. Seeing the firing, he concealed himself, taking the advantage of darkness. Thereafter, the appellants Md. Wali and Md. Afaq entered into his house and started making query about him to his wife but his



wife did not give any reply. Thereafter, on the point of pistol, they took the key of almirah and took the ornaments. In the meantime, the fire was put in the grass, which was stored at the door, by someone. Due to burning of the grass, smoke and light spread over at the door and then all fled away from there. The cause of occurrence is that there was dispute between him and the appellants in respect to the allotment of the house under Indira Awas Scheme because he got published the illegalities committed by them in distribution of the house under Indira Awas Scheme and he had also filed an application before the authority regarding which enquiry was going on. Due to sustaining firearm injury, her mother died on the spot. The occurrence was witnessed by several persons.

4. On the basis of the aforesaid fardbeyan (Ext.A) of the informant Md. Ayazuddin (P.W.9), Araria P.S. Case No.278 of 1999 was instituted under Sections 147, 148, 149, 341, 323, 447, 452, 379 and 302 of the Indian penal Code and Section 27 of the Arms Act against the 11 accused including the appellants and 25-30 unknown.

5. After investigation, police submitted the chargesheet against the appellants and one Sk. Samsuddin under the aforesaid Sections. Thereafter, the cognizance of the offence



under the aforesaid Sections was taken and the case was committed to the court of sessions, numbered as Sessions Trial No.189 of 2001, for trial.

6. The appellants Md. Wali Ahmad and Md. Afaque stood charged under Section 302 of the Indian Penal Code, whereas the other appellants stood charged under Sections 302/149 of the Indian Penal Code. Further, the appellants Md. Afaque, Md. Pasha and Md. Wali Ahmad stood charged under Section 27 of the Arms Act.

7. During trial, the prosecution examined, altogether, 13 witnesses and also got exhibited several documents in support of its case.

On the other hand, the defence examined, altogether, 9 witnesses in support of their defence, out of which D.W.1 Mahendra Lal Das, Assistant Nazir, D.W.2 Mahendra Prasad Sah, Nazir, and D.W.5 Rajendra Paswan, Driver, of Collectorate, Araria, are on the point of alibi of appellant Md. Rayesuddin to the effect that he being the driver in Collectorate, Araria, was on duty till 10.00 P.M. on 17.06.1999 in Araria. D.W.3 Saryug Ram, D.W.4 Radhe Ram, D.W.6 Md. Zuber Alam, D.W.7 Md. Yusuf, D.W.8 Md. Soyeb Alam and D.W.9 Md. Fazid are on the point that on the date of the occurrence



quarrel started in the day in between the informant Md. Ayazuddin (P.W.9) and his brothers. At the time of the occurrence, in course of quarrel, Md. Ayazuddin opened fire at his brother Md. Abesh (P.W.7) but the same hit to Bibi Julekha, the mother of Md. Ayazuddin, who had come in rescue. But the informant Md. Ayazuddin due to enmity with the appellants implicated them with false story.

8. The learned trial court on scrutinizing the evidence, available on the record, convicted and sentenced the appellants in the manner, as indicated above, through the impugned Judgment of conviction and Order of sentence, while acquitted the co-accused Sk. Samsuddin for the charge under Sections 302/149 of the Indian Penal Code.

9. Learned counsel appearing for the appellants argued that while P.W.1 Md. Gayas, P.W.4 Md. Idris, P.W.5 Bibi Noor Sadi, P.W.6 Nargis Bano and P.W.7 Md. Abesh Alam have claimed to be the eye witnesses of the occurrence but their evidence shows that they reached at the place of the occurrence after the occurrence but the learned trial court did not consider their evidence in right perspective. He further argued that, in fact, quarrel started in between the informant Md. Ayazuddin (P.W.9) and his brother since the evening of the date of the



occurrence, which continued till late night and, in that course, the informant Md. Ayazuddin (P.W.9) opened fire at his brother but the same hit at her mother, who had come in rescue. P.W.2 Md. Islamuddin and P.W.5 Nargis Bano have also stated in their evidence that when they reached at the place of the occurrence, then saw that Bibi Julekha, the mother of the informant, was lying on the ground, sustaining firearm injury and she disclosed that she was shot fire by her son (Wakil) and also told to take her to the hospital but the learned trial court illegally disbelieved the evidence of P.W.2 and P.W.5.

On the other hand, learned Additional Public Prosecutor appearing for the State argued that from the evidence of P.W.1 Md. Gayas, P.W.3 Md. Yakub Alam, P.W.4 Md. Idris, P.W.6 Nargis Bano, P.W.7 Md. Abesh Alam and P.W.9 Md. Ayazuddin, it is apparent that all the appellants forming an unlawful assembly reached in the courtyard of P.W.4, searching the informant Md. Ayazuddin (Wakil) and from there, they proceeded towards the house of the informant and on seeing the informant, Md. Wali opened fire but the same hit at the mother of the informant, who was in front of the informant. Dr. Arun Kumar Choudhary (P.W.11), who conducted the post-mortem examination over the dead body of the deceased Bibi Julekha,



also found one firearm injury on her dead body and according to him, the cause of death of the deceased was due to said firearm injury, as such, there is no infirmity and illegality in the impugned Judgment of conviction and order of sentence.

10. I have gone through the evidence, available on the record, to appreciate the arguments, as advanced on behalf of both sides.

11. Out of the 13 prosecution witnesses, P.W.1, Md. Gayas, P.W.2 Md. Islamuddin, P.W.4 Md. Idris, P.W.5 Bibi Noor Sadi, P.W.6 Nargis Bano, P.W.7 Md. Abesh Alam and P.W.9 Md. Ayazuddin (informant) have claimed to be the eye witnesses to the occurrence. P.W.3 Md. Yakub Alam has been declared hostile. P.W.8 Abdul Sakoor, husband of the deceased, was not present at the time of the occurrence. When he came to the house, then he came to know about the occurrence from his sons. P.W.10 Abdul Samad is the witness of the inquest report (Ext.4) and he has proved his signature on the inquest report as Ext.5 and also the signature of Md. Saiyed as Ext.5/1. P.W.12 Md. Yakub is the witness of seizure list of blood stained soil and he proved his signature on the seizure list as Ext.7. P.W.11 Dr. Arun Kumar Choudhary is doctor, who held the post-mortem examination over the dead body of the deceased. P.W.13



Umashankar Choudhary is the Investigating Officer of the case.

12. P.W.11 Dr. Arun Kumar Choudhary has stated in his evidence that on 18.06.1999, he was posted at Sadar Hospital as C.A.S. (Civil Assistant Surgeon). On that date, he conducted the autopsy over the dead body of Bibi Julekha, wife of Abdul Saqoor, resident of Prem Nagar, P.S. Araria R.S., District-Araria, and found the following ante mortem injuries:

Injury No.1:- 1/2" x 1/2" in diameter with tattooing margin wound on right side of front of chest wall (entry wound).

Injury No.2:- 1" x 1" in diameter with charred margin wound on back of right side of chest wall (exit wound).

Injury No.3:- Fracture fifth rib anteriorly and fracture seventh rib back of chest wall.

Whole Thoracic cavity was full of blood.

Injury No.4:- Left lungs ruptured with pleura.

According to this witness, the cause of death was haemorrhage and shock as a result of firearm injury such as three-nut and he proved the post-mortem report as Ext.6.

From the evidence of this witness, it is clear that the cause of death of the deceased Bibi Julekha was due to firearm injury as found on her person.

13. Now, I proceed to discuss the evidence of the



so-called eye witnesses to ascertain whether the appellants are liable for committing the murder of the deceased Bibi Julekha by causing firearm injury.

14. P.W.1 Md. Gayas is the brother of the informant Md. Ayazuddin (P.W.9). He has stated in his evidence that the occurrence is of before 2 years and 1½ months. At about 09.30 P.M., when he was going to sleep, after taking the dinner, the accused Wali, Mustafa, Afaq, Nazbool, Rayes, Wasique, Niaz, Riyaz, Samsuddin and Kasim entered into the courtyard of Idris (P.W.4) and pointing the pistol made query whereabouts of Wakil (P.W.9). His sister-in-law Bibi Noor Sadi (P.W.5) moved from the courtyard, raising alarm, saying that the life of Waki will not be spared. Thereafter, his mother Bibi Julekha came out, raising alarm, then Wali opened fire, which hit at Julekha. Afaq also opened fire but the said firing did not hit to anyone. Julekha started crying, saying that Wali had shot fire. Thereafter, Wali, Mustafa and Afaq entered into the courtyard and pointed the pistol at the wife of the informant (Wakil) and creating fear took the key and took the ornaments from the almirah. In the meantime, someone put fire on the dry grass, stored at the door. In the flame and smoke of fire, he identified the accused. He has further stated in his cross



examination that the accused Samsuddin is his grandfather in relation and Wali is the son of Samsuddin. Rayesuddin is his own brother. There is no paper regarding partition in between his father and the accused Samsuddin. He has further stated that his brother Ayazuddin (informant) used to do the pairvi in the office of the Collector for providing house under Indira Awas Scheme but the house was not allotted to him on the ground that he has landed property. He has further stated that he and his brother Md. Idris (P.W.4) used to reside in the same house and courtyard is also the same. The house of the witnesses Md. Islamuddin (P.W.2), Md. Yusuf and Md. Yakub (P.W.12) is 50 cubit away to his house. The house of the witness Md. Islamuddin (P.W.2) is in south, whereas the house of the witnesses Yusuf (P.W.7) and Yakub (P.W.3) are in the courtyard of Islam. This witness has denied the suggestion of the defence that he had not stated before the police that on the date of the occurrence, he returned to his house after doing the work of labourer from Araria and after taking dinner, he slept but P.W.13 Umashankar Choudhary, the Investigating Officer of the case, has stated in his cross-examination at paragraph-14 that P.W.1 Md. Gayas had stated before him that on the date of the occurrence, he returned from Araria after doing the work of



labourer and slept on taking the dinner and after moving of the accused, he reached near her mother and saw that she had died.

From the evidence of this witness, as discussed above, it is apparent that while he has claimed to be eye witness of the occurrence but he had stated before the Investigating Officer (P.W.13) in his statement under Section 161 of the Code of Criminal Procedure that he was sleeping at the time of the occurrence and after moving of the accused, he came out of the house and saw his mother dead. As such, this witness is not the eye witness of the occurrence of causing gun shot injury to his mother Bibi Julekha.

15. P.W.2 Md. Islamuddin has deposed in his evidence that the occurrence is of before two years at about 09.00 P.M. in the night. At that time, he was at his house and on hearing the sound of firing, he along with Yusuf and Yakub (P.W.3) came out of the house and then saw that the mother of Ayazuddin (P.W.9) was lying on the ground and was saying that she was shot fire and also asked to take her to the hospital but, thereafter, she died. At that time, the informant (P.W.9) and his four brothers were present. He has further stated in his cross examination that he had seen the occurrence from his door, which is situated about 4-5 cubits from the place of the



occurrence. At that time, the mother of Ayaz was speaking that Ayaz had shot fire, due to that reason, all brothers of Ayaz were quarreling to each other. This witness further stated that since the evening of the date of the occurrence, the quarrel started in respect to Indira Awas Scheme. He has further stated in his cross examination that he had disclosed before the police that P.W.9 was telling that if the house under Indira Awas Scheme is not allotted to his brother Gayas (P.W.1), then he will object the allotment of the house under Indira Awas Scheme to any villager, due to that reason, quarrel started in between the brothers of Ayaz.

From the evidence of P.W.2, it is clear that when he along with Yusuf and Yakub (P.W.3) came out of the house, at that time, the mother of Ayaz (P.W.9) was lying on the ground and she was telling that Ayaz (P.W.9) had shot fire at her. He has not stated in his evidence about the presence of the appellants at the place of the occurrence, at the time of occurrence.

16. P.W.4 Md. Idris has deposed in his evidence that the occurrence is of at about 09.30 P.M. of 17.06.1999. At that time, he was sitting in his courtyard. All of sudden, 20-25 persons entered into the courtyard and surrounded him. Out of



them, he identified the accused Md. Wali, Md. Afaq, Md. Rayes, Zakir, Riyaz, Nazbool, Kasim, Wasique, Niaz, Mustafa and Samsuddin. The accused Md. Wali, Afaq and Mustafa had three- nuts in their hands. The accused Wali and Afaq on the point of three-nut asked him to keep silent. In the meantime, his wife Noor Sadi (P.W.5) moved from there to inform Ayazuddin (Wakil). All the accused made query to him about the whereabouts of Wakil, saying that Wakil will not be spared. His wife Noor Sadi entered into the courtyard of Wakil and started raising alarm, for moving to Wakil, thereupon his mother came out to the courtyard, then the accused Wali, Afaq and Mustafa having three-nuts in their hands proceeded towards courtyard of Wakil (Ayazuddin) and also made query of whereabouts of Wakil to his mother, saying that Wakil will not be spared on which his mother raised alarm to flee away, then Wali and Afaq opened fire through three-nuts, which hit to his mother. Thereafter, his mother told that she had been shot fire and she fell down. Thereafter, accused Wali, Afaq and Mustafa entered into the house of Ayazuddin (Wakil) and took the key of Godrej creating terror on his wife and took the ornaments from the Godrej. The lantern was burning at the door, at that time, fire was put in the grass, stored at the door,



due to which light spread over and then all accused fled away from there. When he reached near his mother, then she told that Wali had shot fire and also asked to carry her to the hospital. This witness has further stated that Wali, Mustafa, Afaq and Rayes under conspiracy with the B.D.O. used to realize the money for allotment of the fund for the house under Indira Awas Scheme, which was protested by his brother Ayazuddin (P.W.9) and he had also filed an application, which was inquired by the D.D.C. and several allotments were cancelled. Due to that reason, the accused had come for committing "Maar-Peet". This witness has denied the suggestion of the defence to the effect that he had stated before the police in his statement under Section 161 of the Code of Criminal Procedure that he had not seen to anyone to shot fire and his courtyard was surrounded by thatched wall but P.W.13 Umashankar Choudhary, the Investigating Officer of the case, in his cross examination in paragraph-5 has stated that this witness had stated before him that he had not seen to anyone to shot fire and the land dispute was going on with the accused Wali. This witness has further stated in his cross examination in paragraph-6 that in the east of his door, the house of his father Sakoor and the informant Ayazuddin is situated. In the north of his door and the door of



the informant, the house and door of accused Samsuddin is situated. Samsuddin is his grandfather in relation. This witness has further stated in his cross examination at paragraph-18 that one minute after the firing, he came out from the courtyard and reached at the door, where 25-30 persons including the accused were present. He further stated that when he reached near his mother, she was lying on the ground and after 1-2 minute, she died. He reached near his mother at first, thereafter, his other brothers reached there.

From the evidence of this witness, it is apparent that he is not the eye witness of the occurrence and reached at the place of the occurrence after hearing the sound of firing.

17. P.W.5 Bibi Noor Sadi is the wife of P.W.4 Md. Idris and sister-in-law of the informant (P.W.9). She has stated in her evidence that at about 09.30 P.M., on the date of the occurrence, she was at her courtyard. All of sudden, 20-25 persons entered into her courtyard, out of which she identified the accused Wali, Wasique, Niaz, Samsuddin, Kasim, Nazbool, Riyaz, Afaque, Mustafa, Zakir and Rayes. Accused Wali, Afaque and Mustafa caught hold her husband Idris (P.W.4) and made query of whereabouts of Wakil, saying that Wakil would not be spared. At that time, the accused Wali, Afaque and



Mustafa were armed with pistols. She, anyhow, concealing herself fled away and reached in the courtyard of Wakil (P.W.9), and raising alarm asked Wakil to flee away. On hearing her voice, her mother-in-law Bibi Julekha came out from the courtyard, then she also proceeded behind her. In the meantime, Wali fired, which hit at her mother-in-law Bibi Julekha. Afaque also made firing. She identified them in the light of lantern. On sustaining firearm injury on chest, her mother-in-law fell down. Thereafter, Wali, Afaque and Mustafa entered in the house of Wakil (P.W.9) to search him, then her mother-in-law raised alarm to flee away, saying that she was shot fire. In the meantime, the grass, stored at the door, started burning in which she identified the accused and, thereafter, the accused fled away. Thereafter, she reached near her mother-in-law, who told that son had shot fire and asked to rush her to the hospital. She has further stated that after allotment of the house under Indira Awas Scheme, the dispute was going on in between Wakil (P.W.9) and the accused. This witness has denied the suggestion of the defence that she had stated before the police that her mother-in-law had told that son had shot fire but P.W.13 Umashankar Choudhary, the Investigating Officer of the case, has stated in his cross examination at paragraph-8 that this witness had stated



in her statement under Section 161 of the Code of Criminal Procedure that the deceased was lying on the ground and she disclosed that son had shot fire.

From the evidence of this witness, it is apparent that while she has stated in her examination-in-chief that Md. Wali shot fire at the deceased but she had stated before the police in her statement under Section 161 of the Code of Criminal Procedure that the deceased on sustaining firearm injury fell down on the ground and she disclosed that she had been shot fire by son. As such, this witness is not the eye witness of the occurrence and when she reached near the deceased, deceased informed that she had been shot fire by son.

18. P.W.6 Nargis Bano is the wife of the informant Md. Ayazuddin (P.W.9). She has stated in her evidence that before 2½ years at about 09.30 P.M., she was going to sleep in the room after taking the dinner. In the meantime, her Gotani Noor Sadi (P.W.5) came from the west direction in the courtyard and raised alarm to flee away Wakil Saheb (informant Ayazuddin) as several persons had come to kill him. On hearing the voice of her Gotani, her mother-in-law Julekha came out from the house and her husband was also behind her mother-in-law. Seeing her husband, the appellant



Wali opened fire but the same hit to her mother-in-law, who was in front of her husband. At that time, her mother-in-law asked to her son (informant) to flee away. Thereafter, she along with her husband entered into the house and tried to lock the door from inside but the appellants Wali, Afaque and Mustafa entered into the house having pistol in their hands and made query about her husband but she did not give reply. Thereafter, on the point of pistol, they took the key of almirah and took away the ornaments after opening the almirah. Her mother-in-law after sustaining firearm injury died. In respect to allotment of the house under Indira Awas Scheme, the dispute was going in between her husband with the appellants Rayes, Afaque and Wali regarding which the case was also instituted. At the time of the occurrence, she also identified Nazbool, Niaz, Zakir, Wali, Wasique, Kasim, Afaque and Riyaz. In her cross examination, in paragraph-2, she denied the suggestion of the defence that she had stated before the police that she learnt, later on, that her mother-in-law was shot fire and died at the door but P.W.13, who is the Investigating Officer of the case, has stated in his cross examination at paragraph-9 that Nargis Bano (P.W.6) had stated before him that she came to know, later on, that her mother-in-law was shot fire and died at the door and she



had only heard the sound of firing.

While this witness has claimed to be eye witness of the occurrence but she had stated before the police in her statement under Section 161 of the Code of Criminal Procedure that she came to know, later on, that her mother-in-law had been shot fire, who died at the door and she had only heard the sound of firing. As such, this witness is not an eye witness of the occurrence and first time, she gave statement before the trial court, claiming eye witness of the occurrence.

19. P.W.7 Md. Abesh Alam is the brother of the informant Md. Ayazuddin (P.W.9). He has stated in his evidence that the occurrence is of before two years and eight months of 09.30 P.M. At that time, after taking the dinner, he was going to sleep, then 20-25 persons including the appellants Md. Mustafa alias Pasa, Afaq, Wali, Zakir, Rayes, Wasique, Niaz, Riyaz, Nazbool, Kasim with Samsuddin entered into the courtyard of his brother Idris (P.W.4). The appellants Afaq, Wali, Mustafa and Zakir encircled his brother Idris (P.W.4) and on the point of three-nut asked about Wakil (informant Md. Ayazuddin) in abusive language. In the meantime, his Bhabhi Bibi Noor Sadi (P.W.5), raising alarm moved from there and entered into the courtyard of Wakil Saheb (informant Md.



Ayazuddin) and asked Wakil Saheb to flee away, saying that several persons have come to kill him. On hearing the alarm of his Bhabhi, his mother Bibi Julekha came out from the house towards door and Wakil Saheb (informant Md. Ayazuddin) also proceeded behind his mother, followed by Noor Sadi (P.W.5). He and his Bhabhi also proceeded behind them. In the meantime, appellants Afaq, Wali, Mustafa, Zakir and others started to move towards courtyard of Wakil Saheb (informant Md. Ayazuddin). On seeing his mother, Wali made query to her about Wakil Saheb (informant Md. Ayazuddin) in abusive language and on seeing Wakil Saheb (informant Md. Ayazuddin), Wali shot fire at him through pistol but the same hit his mother. Afaq also made firing but the same did not hit to anyone. At that time, her mother, in injured condition, told to Wakil to flee away, saying that Wali had shot fire. Thereafter, he along with his other family members concealing themselves fled away from there. Thereafter, Afaq, Mustafa, Wali and Zakir entered into the house of Wakil Saheb (informant Md. Ayazuddin) and creating fear, took the key of Godrej from the wife of Wakil Saheb (informant Md. Ayazuddin) and took away the golden ornaments after opening the Godrej. In the meantime, someone put fire in the dry grass stored at the door,



in the light of which, he identified the accused fleeing away from there. He has further stated that Wakil Saheb (informant Md. Ayazuddin) had given an application before the D.D.C. for enquiry in the distribution of the houses under Indira Awas Scheme, due to that reason, the allotment of the house under Indira Awas Scheme was stopped. His brother Wakil Saheb (informant Md. Ayazuddin) had also filed a case against the appellants Afaq, Rayes and the B.D.O. and also got the same published in the newspaper, due to that reason, the alleged occurrence took place. He has also stated in his cross examination that in respect to Indira Awas Scheme, the dispute is going on in between his brother Wakil Saheb (informant Md. Ayazuddin) and Afaq. This fact was also disclosed by him before the police. This witness showed his ignorance to the suggestion of the defence about lodging of the criminal case bearing G.R. 807 of 1993 by Samsuddin, the father of the appellant Wali, in which he was accused. He has further stated in his cross examination at paragraph-6 that while he and his family members had raised alarm but no person of the Mohalla had come. Wakil Saheb (informant Md. Ayazuddin) also moved from Angan and concealed himself somewhere. In the same paragraph, this witness further stated that his mother died within



3-4 minutes after sustaining firearm injury. When he along with others reached near his mother, Idris (P.W.4), Noor Sadi (P.W.5) and Ayazuddin (P.W.9) were present. At that time, he did not talk to any family members. In paragraph-8 of his cross examination, this witness stated that after staying few time, he proceeded for police station. He further stated in paragraph-9 of his cross examination that he had heard two sounds of firing and came with Darogaji and showed him the dead body and blood. This witness further stated in his cross examination at paragraph-10 that he reached at the police station within 1/2 hour and returned from there on a jeep of the police. This witness further stated in his cross examination at paragraph-12 that the place, where his mother was shot fire, was at a distance of 5-6 cubits to the house of Wakil Saheb (informant Ayazuddin). In the said house, he and his father used to reside. At the time of the occurrence, his father was not present at the house and he brought his father after the occurrence. In the same paragraph, this witness stated that his statement was recorded by the police on the next day. This witness has denied the suggestion of the defence in paragraph-14 of his cross examination to the effect that it is not true that on the date of the occurrence, since 09.00 A.M., quarrel started in his courtyard



and, in that course, he tried to convince his brother Wakil Saheb (informant Ayazuddin) for returning the money, which was taken by him from different persons for providing the house under Indira Awas Scheme. In that course, Wakil Saheb (informant Md. Ayazuddin) became angry and made firing but the same hit at his mother, who had reached there for rescue. He also denied the suggestion of the defence to the effect that since the dispute was going on in between Wakil Saheb (informant Ayazuddin) with the appellants, due to that reason, they have falsely been implicated in this case.

From the evidence of this witness, it appears that he has claimed to be an eye witness to the occurrence and just after the occurrence, he went to the police station and returned to the place of the occurrence on a jeep of Darogaji but his statement was recorded next day after the occurrence by the police.

20. P.W.8 Abdul Sakoor is the husband of the deceased and the father of the informant Md. Ayazuddin (P.W.9). This witness has stated that the occurrence is of 09.30 P.M. of 17.06.1999. At that time he was not at his house as he had gone to the house of his daughter in village-Gayeri. He returned in the same night at 02.00 P.M., then he was informed



by his sons Idris (P.W.4), Gayas (P.W.1), Abesh (P.W.7) and Ayazuddin (P.W.9), Bibi Noor Sadi (P.W.5) and Bibi Nargis (P.W.6) that the appellants Mustafa, Afaq, Zakir, Rayes, Bali, Wasique, Kamruddin Mian alias Kasim, Nazbool, Riyaz along with Samsuddin and 25-30 persons had come having Farsa, Bhala and three-nuts in the courtyard of his elder son Idris (P.W.4) and caught hold of Idris and also threatened him to kill. At that time, Noor Sadi (P.W.5) rushed to the courtyard of Wakil Saheb (informant Ayazuddin) and told him that the people had come to kill him and asked him to flee away. In the meantime, his wife Bibi Julekha accompanied by Noor Sadi (P.W.5) and Wakil Saheb (P.W.9) came out from the house, then on seeing Wakil Saheb (P.W.9), Wali and Afaq fired through three-nut. The firing of the appellant Wali hit his wife, while firing of Afaq did not hit to anyone. He, later on, came to know that Ashfaq, Bhura, Farooque, Yusuf and Fazil were also the members of an unlawful assembly. He further stated in his cross examination that his son Ayazuddin alias Wakil (P.W.9) had lodged a case against him regarding theft of the ornaments but the ornaments, later on, were recovered in the house, then case was compromised. The said case was lodged by Ayazuddin alias Wakil (P.W.9) before one year of the present occurrence.



He has further stated in his cross examination that he did not know whether Ayazuddin alias Wakil had also filed a case against his father-in-law, mother-in-law and wife. He has also showed his ignorance that G.R.807 of 1993, 1984 of 1988 are going in between him and the appellants. He further stated that before 10 years, he was Advocate's clerk in the Civil Court. He has also stated that while he met to the police in the same night of the occurrence but he gave his statement before the police after two days of the occurrence. He has also stated in paragraph-23 of his cross examination that accused Samsuddin is his uncle and his sons are accused in this case. In paragraph-27 of his cross examination, this witness stated that the house of accused Wali is situated nearby his house.

From the evidence of this witness, it is apparent that he at the time of the occurrence was not at the house and when he reached at 02.00 P.M. in the night of the occurrence, his wife had died and he came to know about the occurrence from his sons Idrish (P.W.4), P.W.1 Gayas, P.W.7 Abesh and P.W.9 Ayazuddin and Bibi Noor Sadi (P.W.5) and Nargis (P.W.6). From the evidence of this witness, it is also clear that the appellants are his pattidars and neighbours.

21. P.W.9 Md. Ayazuddin is the informant of this



case. He has stated in his evidence that on 17.06.1999 at about 09.30 P.M., he was in the process of sleeping, after taking dinner. All of sudden, the appellants along with Samsuddin and 25-30 unknown having Bhala, Farsa and three-nut in their hands, forming an unlawful assembly entered into the courtyard of his brother Idris (P.W.4), who was sitting there. On the point of pistol, the appellants Mustafa alias Pasha and Afaque asked Idris to sit and made query about him. In the meantime, his Bhabhi Noor Sadi (P.W.5) moved from the courtyard and reached in his courtyard, raising alarm that the accused are searching him (Wakil). Thereafter, her mother Bibi Julekha moved from the courtyard towards door and he also proceeded behind her along with his Bhabhi Noor Sadi (P.W.5). At the door, lantern was burning and in the light of lantern, he saw the appellants Md. Mustafa, Md. Afaque and Md. Wali having three-nut in their hands coming towards the courtyard. On seeing her mother, Wali made query to her about him in abusive language, saying that he will not be spared. In the meantime, they saw him, then the appellants Md. Wali and Md. Afaque fired through three-nut. The firing of Md. Wali hit her mother but the firing of Afaque did not to anyone. After sustaining firearm injury, his mother fell down, saying that Wali had fired



and also asked to take her to the hospital. At that time, he, anyhow, concealed himself and saved his life. The appellants Md. Mustafa, Md. Afaque and Md. Wali, thereafter, entered in his house and on the point pistol, took the key of the Godrej from his wife (P.W.6) and took away the ornaments. The cause of the occurrence is that the appellants Afaque and Rayesuddin used to do the work of broker under Indira Awas Scheme and used to collect the money from the persons on the pretext of providing the house under the said Scheme in collusion with B.D.O. He had made complaint to the higher authorities regarding the same, which was enquired by the D.D.C. Later on, he filed Complaint Case No.853C of 1999 on 01.06.1999 against the B.D.O., Afaque and Rayesuddin. Due to filing of the said case, the appellants used to give threatening to him regarding which he had also gave an informatory petition on 02.06.1999 and also got published the same in the newspaper, due to that reasons, the present occurrence took place. He has further stated that Darogaji recorded his fardbeyan at his house and after reading over the same, he put his signature on the fardbeyan and he proved his fardbeyan as Ext.1. He has stated in his cross examination that he joined the Araria Bar Association on 14.11.1996. On his application, resolution was



passed by Araria Bar Association regarding the present occurrence for proper action, the copy of which was sent to the S.P., Araria by the Presiding and Secretary and both had also met to the S.P. He has further stated in paragraph-19 of his cross examination that vide Resolution No.2/12.07.1999, he was suspended from the Araria Bar Association but, later on, his suspension was revoked. He has further stated that his mother had sustained injury on her chest, at a distance of 13 fts. from his house. He has further stated in his cross examination in paragraph-25 that in the night of the occurrence, police was deputed for watching the dead body of his mother and the inquest report was prepared in the next morning by the police at about 06.00 A.M. This witness further stated in paragraph-31 that in this case, in addition to his family members, Yakub (P.W.3) and Islam (P.W.2) are the witnesses. This witness further stated in paragraph-32 that after 2-3 hours of recording of his fardbeyan, he came to know that Farooque, Ashfaque,, Bhoora alias Yusuf and Mahboob were also indulged in committing the occurrence. He had stated the name of the aforesaid persons before the police in his restatement but it appears that the police did not mention their names. He has further stated in paragraph-37 of his cross examination that he



has no paper regarding doing the work of broker by Afaq, Rayes and Md. Wali. Only the villagers had disclosed him regarding the said fact. He has also stated that lantern was burning at the time of the occurrence. Whether it was taken by the police or not, it is not in his memory. He has further stated in his cross examination in paragraph-39 that he had lodged a case, i.e., G.R. No.1704 of 1998 against his father, mother and brother, on mere suspicion, for committing the theft of the ornaments of his wife but the ornaments were recovered, later on, in the house, then the said case was compromised. He has further stated that before the present occurrence, he had lodged a case under Section 107 of the Code of Criminal Procedure against the appellants. He has further stated in paragraph-44 that on 26.09.2002, a joint meeting of Bar Association and Advocates' Association, Araria, was held, in which he was warned to improve his behaviour, not to lodge the false case under Section 376 of the Indian Penal Code. This witness has further stated in his cross examination at paragraph-56 that he had lodged a case for the offence under Sections 379 and 406 of the Indian Penal Code against Dharmdeo Bhagat, Advocate, and the said case was compromised. He has further stated in paragraph-64 that the witnesses, Md. Fazid (D.W.9), Radhe



Ram (D.W.4), Saryug Ram (D.W.3) and Zuber (D.W.6) were in the camp of the accused but he has no knowledge whether the Investigating Officer had recorded their statements during investigation or not. He has further stated in paragraph-65 of his cross examination that he had also lodged a case against the owner of Hindustan Medical Store because on the date of the filing of nomination in the District Board Election, he had asked him that the money is due against him but, later on, he accepted that he had committed mistake. This witness has denied the suggestion of the defence to the effect that he is quarrelsome and in course of quarrel, he made firing, which hit to his mother.

From the evidence of P.W.9 Md. Ayazuddin (informant), it is obvious that he is in habit of lodging the case against the members of Bar Association, Araria, and general people in respect to petty matter for the purpose of putting the pressure, even he also lodged the case against his parents with false allegation of theft. This witness was also warned in the meeting of Bar Association, not to lodge false case of rape. This witness has also litigating and inimical term with the appellants, who are his neighbours and Pattidars.

22. From the evidence of the prosecution witnesses, as discussed above, it is clear that the informant Md.



Ayazuddin (P.W.9) has enmity with the appellants, who are his aganates and neighbours. P.W.1 Md. Gayas, P.W.2 Md. Islamuddin, P.W.4 Md. Idris, P.W.5 Bibi Noor Sadi and P.W.6 Nargis Bano are not the eye witnesses of the occurrence, rather when they reached at the place of the occurrence on hearing the sound of firing, then saw the deceased Bibi Julekha (mother of the informant Md. Ayazuddin), lying on ground in injured condition. P.W.2 Md. Islamuddin has stated that on hearing the sound of firing when he along with Md. Yusuf and Yakub (P.W.3) came out from the house, then saw that the mother of Ayazuddin (P.W.9) was lying on the ground and told that she was shot fire by Ayaz (P.W.9) and brothers of Ayaz were quarreling to each other. P.W.5 Bibi Noor Sadi, sister-in-law of the informant Md. Ayazuddin (P.W.9), also stated in her evidence that when she reached near her mother-in-law Bibi Julekha on hearing the sound of firing, she told that son has shot fire and asked to accompany at hospital. P.W.7 Md. Abesh Alam, who claimed to be eye witness of the occurrence, has stated in his evidence that after staying few time at the place of the occurrence, he proceeded for police station and returned from police station on a Jeep with police but the first information given by him to the police has not been brought on



the record. As such, the aforesaid facts create serious doubt about the manner of the occurrence, as alleged by the informant Md. Ayazuddin (P.W.9) in his fardbeyan, and false implication of the appellants cannot be ruled out due to enmity.

23. On the basis of the facts and the circumstances of the case and the evidence, as discussed above, I find that the prosecution has not been able to prove its case and the charges levelled against the appellants beyond all reasonable doubts.

24. In the result, all the aforesaid three criminal appeals are allowed and the Judgment of conviction dated 26.09.2006 and Order of sentence dated 27.09.2006 passed by the Additional Sessions Judge, Fast Track Court No.III, Araria, in Sessions Trial No.189 of 2001 are, hereby, set aside and the appellants are acquitted of the charges. The appellants, who are on bail, are discharged from the liabilities of their bail bonds.

(Rajendra Kumar Mishra, J)

Hemant Kumar Srivastava, J :- I agree.

(Hemant Kumar Srivastava, J)

**Pradeep
Srivastava/-**

AFR/NAFR	NAFR
CAV DATE	25.07.2018.
Uploading Date	31.10.2018.
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