

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No. 478 of 2013

Arising Out of PS. Case No.-164 Year-1995 Thana- Gopalpur District- Bhagalpur

1. Dilip Mandal, son of Sri Naresh Mandal, resident of Village- Chandrakhara, P.S.- Gopalpur, District- Bhagalpur.
2. Janardhan Mandal @ Janardan Mandal, Son of Late Ishwar Mandal, resident of Village - Chandrakhara, P.S.- Gopalpur, District- Bhagalpur.
3. Baleshwar Mandal, son of Late Ishwar Mandal, resident of Village- Chandrakhara, P.S.- Gopalpur, District- Bhagalpur

... .. Appellants

Versus

The State of Bihar

... .. Respondent

with

Criminal Appeal (DB) No. 499 of 2013

Arising Out of PS. Case No.-164 Year-1995 Thana- Gopalpur District- Bhagalpur

1. Bhagwan Mandal, son of Late Mahawir Mandal (*Expunged vide Court's order dt. 10.12.2018 passed in Cr. Appeal (DB) No. 478 of 2013*).
2. Lal Mani Mandal, son of Late Mahawir Mandal, resident of Village- Chandra Khara, Police Station- Gopalpur, District- Bhagalpur
3. Bibash Mandal, son of Late Chichay Mandal, resident of Village- Chandra Khara, Police Station- Gopalpur, District- Bhagalpur

... .. Appellants

Versus

The State of Bihar

... .. Respondent

Appearance :

(In Criminal Appeal (DB) No. 478 of 2013)

For the Appellants : Mr. Ajay Thakur, Adv.
Mr. Ranjan Kumar Jha, Adv.
Mr. Mritunjay Kumar Mishra, Adv.

For the State : Mr. Ajay Mishra, A.P.P.

(In Criminal Appeal (DB) No. 499 of 2013)

For the Appellants : Mr. Vikram Dev Singh, Adv.
Mr. Vikram Singh, Adv.

For the State : Mr. Mayanand Jha, A.P.P.

CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

and

HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAKESH KUMAR)

Date : 31-01-2019



In both the appeals, appellants were tried together, convicted and sentenced by a common judgment in Sessions Trial No. 303 of 1997 and as such, both the appeals were taken up together under the heading “For Hearing” and are being disposed of by this common judgment.

2. Three appellants in Cr. Appeal (DB) No. 478 of 2013 by judgment dated 08-05-2013 were convicted for commission of offence under Section 302 of the Indian Penal Code, 1860 (hereinafter referred to as ‘I.P.C.’) and Section 27 of the Arms Act, 1959 (hereinafter referred to as ‘Arms Act’), however; appellants in Cr. Appeal (DB) No. 499 of 2013 by the same judgment were convicted for commission of offence under Section 302/34 of the I.P.C. and Section 27 of the Arms Act. All the appellants under Section 302, 302/34 of the I.P.C. by order dated 16-05-2013 were sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs. 10,000/- each. In default of payment of fine, they were directed to further undergo simple imprisonment for two months. For offence under Section 27 of the Arms Act, all the appellants by order dated 16-05-2013 were sentenced to undergo rigorous imprisonment for three years and to pay a fine of Rs. 1,000/- each. In default of payment of fine, they were directed to further undergo simple imprisonment



for one month. The appellants were convicted and sentenced by learned 5th Additional Sessions Judge, Naugachia (hereinafter referred to as 'Trial Judge') in Sessions Trial No. 303 of 1997 (arising out of Gopalpur P.S. Case No. 164 of 1995).

3. Short fact of the case is that on 30-11-1995 at 1:30 PM, the Sub-Inspector of Police-cum-Officer Incharge, Gopalpur Police Station, Sri Brinda Prasad (P.W.2) recorded *fardbeyan* of Pramod Kumar (C.W.3) son of late Vakil Mandal. The *fardbeyan* was recorded by the side of the road near Murli Chowk under Gopalpur Police Station within the district of Bhagalpur. The informant in his *fardbeyan* stated that on the same date i.e. on 30-11-1995 at 11:00 A.M., he alongwith his uncle Mukti Mandal (deceased) were proceeding towards Naugachia court. While they reached near Murli Chowk, he (C.W.3) sat for urinating, in the meanwhile, his uncle (deceased) proceeded ahead to some distance and while he was at a distance of about 20 yards from banana orchard of eastern field, accused 1. Rajendra Mandal, 2. Kailash Mandal, 3. Bibhash Mandal (appellant no. 3 in Cr.Appeal DB No. 499 of 2013), 4. Baleshwar Mandal, 5. Janardan Mandal, 6. Dilip Mandal (accused 4, 5 & 6 are appellant no. 3, 2, 1 respectively in Cr. Appeal DB No. 478 of 2013), 7. Bhagwan Mandal (appellant no. 1 in Cr. Appeal DB No. 499 of 2013, who



died during pendency of the appeal), 8. Lal Mani Mandal (appellant no. 2 in Cr.Appeal DB No. 499 of 2013), 9. Shakaldeep Mandal, 10. Mahesh Mandal, 11. Jangli Mandal and 12. Arvind Singh all carrying fire-arm i.e. three not and musket in their hands arrived there. From amongst them, Rajendra Mandal using abusive language exhorted that he (deceased) was behind him since long and thereafter, Rajendra Mandal, Dilip Mandal, Janardan Mandal and Baleshwar Mandal gave shot of firing from three not on his uncle, whereas, other accused persons remained standing carrying their weapon on north and south side. After getting fire-arm injury, his uncle Mukti Mandal (deceased) fell down and thereafter, all the accused persons again entered into the banana orchard and fled away. After hearing the sound of firing and also alarm being raised by the informant, from Murli Chowk, Manoj Mandal (C.W.2), Rajesh Mandal (C.W.1) (both sons of deceased Mukti Mandal) and Maini Mandal (C.W.4) and number of other persons, who were present at chowk, came runningly and saw & identified the accused persons while fleeing away. While the informant reached near his uncle Mukti Mandal (deceased), he saw that he (deceased) had fallen and from his head and chest, blood was oozing out. The reason for occurrence was given by the informant that there was dispute in between his



uncle (deceased) and Baleshwar Mandal (appellant no. 3 in Cr. Appeal DB No. 478 of 2013) and case was pending in the court. His uncle was opposing the accused persons, whereas the accused persons were supporting the criminal. The informant claimed that the aforesaid F.I.R. named accused persons, due to old enmity, has killed his uncle by giving gun shot injury. The said *fardbeyan* was read over to him and after finding it correct, he put his signature.

4. On the basis of said *fardbeyan*, on 30-11-1995 at 05:00 PM, a formal F.I.R., vide Gopalpur P.S. Case No. 164 of 1995 was registered for offence under Section 302/34 of the I.P.C. and Section 27 of the Arms Act against aforesaid 12 accused persons. After investigation on 05-03-1996, chargesheet was submitted against six accused persons (appellants in the aforesaid appeals) keeping investigation pending against others. After submission of chargesheet, on 18-03-1997, the learned Addl. Chief Judicial Magistrate, Naugachia took cognizance of the offence and case was committed to the court of sessions on 02-05-1997 and it was numbered as Sessions Trial No. 303 of 1997. Thereafter, on 24-06-1998 charge was jointly framed for offence under Section 302/34 of the I.P.C. and Section 27 of the Arms Act against all the six accused persons. It is clarified that



the appeals were filed by all the six convicts, however during pendency of the appeal i.e. Cr. Appeal (DB) No. 499 of 2013, the appellant no. 1 (Bhagwan Mandal) died. The said information was given by learned counsel for the appellants at the time of hearing of the appeal and thereafter, while granting time for filing affidavit, a report was called for from the concerned Superintendent of Police. After receipt of the report, suggesting that the appellant no. 1 Bhagwan Mandal {in Cr. Appeal (DB) No. 499 of 2013} has already died, this Court directed for expunging the name of appellant no. 1 Bhagwan Mandal { in Cr. Appeal (DB) No. 499 of 2013}, since the case against him stood abated.

5. During the trial, initially, two prosecution witnesses were examined namely, Parmanand Mandal (P.W.1), who was witness to the inquest report and P.W.2 Brinda Prasad was the investigating officer of the case. Subsequently, as court witnesses, six witnesses were examined, who are C.W.1 Rajesh Mandal (son of the deceased), C.W.2 Manoj Mandal (another son of the deceased), C.W.3 Pramod Mandal (informant of the case and nephew of the deceased), C.W.4 Mani Mandal, who was declared hostile, C.W.5 Ram Sharan Mandal (witness to the inquest report) and C.W.6 Sashi Shekhar Chaudhary (Pharmacist



of hospital), who has come forward to prove the *post-mortem* report.

6. In the case, after conclusion of the prosecution evidence, on three occasions, statement of accused persons under Section 313 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'Cr.P.C.') was recorded. Firstly on 01-02-2012, secondly on 25-09-2012 and lastly on 31-10-2012, statement under Section 313 Cr.P.C. of accused was recorded, however; on perusal of all the three statements, the court was of the opinion that it was not proper compliance of the provision.

7. Sri Ajay Thakur, learned counsel assisted by Sri Ranjan Kumar Jha, learned counsel for the appellants {in Cr. Appeal (DB) No. 478 of 2013} as well as Sri Vikramdeo Singh, learned counsel assisted by Sri Vikram Singh, learned counsel for the appellants {in Cr. Appeal (DB) No. 499 of 2013} have argued that the prosecution has miserably failed to establish its case beyond all reasonable doubt, even though, the learned Trial Judge has passed the judgment of conviction and sentence.

8. According to Sri Thakur, learned counsel for the appellants, in the case, none had seen the occurrence, but some of the witnesses have come forward claiming to be eye-witness and deposed, as if, the occurrence was seen by those witnesses. In the



case, C.W.1 Rajesh Mandal, C.W.2 Manoj Mandal, C.W.3 Pramod Mandal have claimed to be eye-witness to the occurrence, however on examination of their evidence, it is evident that all the witnesses while deposing had deposed, as if, they were only present at the time of occurrence. They had not shown presence of other witnesses at the time of occurrence. Those witnesses have not stated regarding presence of other witnesses at the place of occurrence. He further submits that ofcourse in the case, the doctor, who conducted *post-mortem*, was not examined, rather a pharmacist, who had claimed to be conversant with the writing and signature of the doctor who conducted *post-mortem* examination, has come forward to prove the *post-mortem* report. On perusal of the *post-mortem* report i.e. Ext.3 it is evident that none of the witnesses had seen the occurrence. He submits that it is consistent case of the prosecution that the deceased was given first shot of firing from the back side, which hit on the back and he fell down, but *post-mortem* report shows that there is no entry wound on the back side, rather all the wound was on the front side i.e. two shot on the chest and one shot on the head of the deceased was found in the *post-mortem* examination report.



9. According to Sri Thakur, learned counsel for the appellants, in absence of investigating officer as well as without bringing on record inquest report, the prosecution has miserably failed to establish the place of occurrence. It is not case of prosecution that any fired cartridge was recovered, whereas it is consistent case of the prosecution that number of shots were fired at the time of occurrence. During the trial, neither seizure list relating to blood-stained soil nor any fired cartridge was brought on record. Even the inquest report has not been formally proved. In the case, only signature of two so-called witnesses to the inquest report was got exhibited, which were marked as Ext.1 and Ext.2. Signature of P.W.1 Parmanand Mandal on inquest report was marked as Ext.1, whereas signature of C.W.5 Ram Sharan Mandal on inquest report was marked as Ext. 2. It has also been argued that on examination of evidence of P.W.1 and C.W.5, it is evident that inquest report was actually not prepared in their presence, rather their signature was obtained.

10. Sri Thakur, learned counsel for the appellants has further argued that during trial, neither *fardbeyan* nor F.I.R. has formally been proved and exhibited, however; signature of informant on *fardbeyan* was got exhibited and marked as Ext.1. According to learned counsel for the appellants, though



investigating officer was examined as P.W.2, in his evidence, he has stated nothing, rather he was not in a position to make any explanation as to whether he himself had recorded *fardbeyan* or not and as such, the case of defence was seriously prejudiced. At the time of argument, it was submitted that it appears that the deceased, since was accused in a case, might had been killed by someone else without being witnessed by anyone and subsequently, due to grudge regarding occupation of half *katha* of land of the appellants side, all the appellants were falsely implicated by the prosecution in the case. In sum and substance, it has been argued that despite the fact that prosecution was not in a position to establish the case beyond all reasonable doubt, the learned Trial Judge has incorrectly passed the judgment of conviction and sentence, which requires interference.

11. Sri Ajay Mishra, learned Addl. Public Prosecutor has opposed the appeals and he submits that in this case, evidence of informant, who was examined as C.W.3, is itself sufficient to prove that the prosecution has been able to establish its case beyond all reasonable doubt.

12. Besides hearing learned counsel for the parties, we have minutely examined entire evidence and after going through the same, we are, *prima facie*, satisfied that the prosecution has



not been able to establish its case beyond all reasonable doubt and it is a fit case for interference with the judgment of conviction and sentence. However, before proceeding, it would be necessary to cursorily refer to the evidence, which has been brought on record. Fact remains that in the case, occurrence had taken place long back in the month of November, 1995, however the evidence in the case had commenced in the year 2012. Initially, only two witnesses had come forward in support of the prosecution, who were P.W.1 Parmanand Mandal and P.W.2 Brinda Prasad.

13. P.W.1 Parmanand Mandal in his evidence has only identified his signature on the inquest report, which was marked as Ext.1, however in cross-examination, he stated that the said inquest report was not prepared in his presence and only on blank paper, his signature was obtained. Similarly, C.W.5 Ram Sharan Mandal in his evidence has identified his signature on inquest report, which was marked as Ext.2, but in cross-examination in paragraph-2, he stated that police had called him and obtained his signature on inquest report, however the said paper was not prepared in his presence. On examination of evidence of this witness also, it is doubtful as to whether the inquest report was actually prepared in his presence or not.



14. P.W.2 Brinda Prasad on 30-11-1995 was posted as Officer Incharge in Gopalpur Police Station, however in his evidence, in paragraph-2, he stated that he cannot recollect as to whether he had recorded *fardbeyan* of Pramod Kumar or not. He was also not in a position to recollect as to whether he had filed chargesheet or not. In paragraph-3, he further stated that he was not recollecting as to whose statement he recorded. He was not in a position to say anything in respect of Sessions Trial No. 303 of 1997. The reason given by him was that he was not in a position to read. Meaning thereby that evidence of investigating officer in the case was meaningless and certainly, in such situation, the defence case was seriously prejudiced.

15. C.W.1 Rajesh Mandal (son of the deceased) has come forward, as if, he had also witnessed the occurrence. He deposed, as if, on the date and time of occurrence, he was waiting for his father on Murli Chowk and while he noticed that his father was coming, he (deceased) was intercepted by these accused persons and given shot of firing. The bullet hit his father's head, chest, stomach and back also. As per paragraph-1 of his evidence, he stated that his father had received four to five gun shot injury. He described that all twelve accused persons had participated in the occurrence. In paragraph-2, he stated that



police was informed, then police arrived there and thereafter, statement was recorded. In paragraph-3, he assigned the reason for the occurrence that with Baleshwar Mandal (appellant no. 3 in Cr. Appeal (DB) No. 478 of 2013) land dispute was going on, regarding which, *panchayati* was also held. As per decision of the *panchayat*, two decimal of land was transferred to Baleshwar Mandal (appellant no. 3 in Cr. Appeal (DB) No. 478 of 2013), however; it was not acceptable to him and he wanted to further occupy land. In paragraph - 8 of cross-examination, he stated that besides the said land, half *katha* more land was occupied by accused persons. In paragraph-12 of his cross-examination, he has given photographic description of shot of firing. He stated that on back side of his father, appellant Rajendra Mandal had given one shot of firing. Janardan, Dilip, Baleshwar Mandal (appellant no. 2, 1 and 3 respectively in Cr. Appeal DB No. 478/13) had also fired. Baleshwar Mandal had given one shot of firing on the back. Dilip Mandal and Janardan Mandal had also fired on the back. Again, he said that Dilip Mandal, Janardan Mandal and Baleshwar Mandal had given shot of firing on the head. In paragraph-13 of his cross-examination, he stated that his father was surrounded by all the accused persons and he gave the description of all the accused persons regarding their presence on



all the four sides. In paragraph-14, he further stated that five accused persons were giving indiscriminate firing and at that very time, he was at Murli Chowk. He was given suggestion that none had seen the occurrence and after finding the dead body of his father, an imaginary story was built up and stated before the police, otherwise, none had seen the occurrence and he had given false statement, however this suggestion was denied by C.W.1.

16. C.W.2 Manoj Mandal (another son of deceased) has also stated in similar manner like C.W.1 Rajesh Mandal. He too has stated that his father was surrounded by accused persons and thereafter, firing was made. In paragraph-2 of his cross-examination, he too stated that his father had received five fire-arm injury - four on his back side and one on his head. He has specified that on the head, firing was made by Dilip Mandal (appellant-1 in Cr.App.DB No. 478/13) in paragraph-3 of his cross-examination, he stated that all the accused persons carrying weapon in their hand had surrounded his father, however out of them, four accused persons had only fired. He has again given exact description as to which accused had surrounded from which side of his father. Meaning thereby that he has also stated that his father was surrounded by all the accused persons. In paragraph-4 of his cross-examination, he stated that first shot of



firing hit on the backside and thereafter, his father fell down and only thereafter, all the accused persons had given shot of firing. At this juncture, it is necessary to notice that in the *post-mortem* i.e. Ext.3, no entry wound was found on the back side of the deceased, only one wound on back side was found, that was exit wound. This fact suggests that C.W.2 had not seen the occurrence. In paragraph-5, he further stated that after alarm and information, police voluntarily arrived at the place of occurrence and his statement was recorded and his signature was also obtained.

17. Sri Ajay Thakur, learned counsel for the appellants had argued that on examination of statement of this witness, it appears that first version of the prosecution was not brought on record and suppressed by the prosecution. This witness i.e. C.W.2 (Manoj Mandal) was also given suggestion that none had seen the occurrence, however he denied the same.

18. C.W.3 Pramod Mandal is the informant of the case and nephew of the deceased. He in his evidence stated that occurrence had taken place at 11:30 AM on 30-11-1995. At the time of occurrence, he was about 20 steps ahead of eastern side. He and his uncle Mukti Mandal (deceased) from the house were going to court. About 5 steps ahead of murli chowk, he sat for



urination and his uncle had proceeded ahead. Thereafter, from maize field as well as banana orchard, all the twelve F.I.R. named accused persons came out and surrounded his uncle Mukti Mandal (deceased), on exhortion given by Rajendra Mandal. Thereafter, Rajendra Mandal used abusive language and he himself and Dilip, Baleshwar, Janardan (all three appellants in Cr.Appeal DB No. 478/13) fired, which hit Mukti Mandal. Other accused persons were standing carrying weapon in their hand. Some of the accused persons were on the northern side, some were on southern side and some towards eastern side fled away. On hearing the sound of firing, Manoj (C.W.2), Rajesh (C.W.1), Ram Sharan (C.W.5), Mani Mandal (C.W.4) arrived. Mukti Mandal had already died due to gun shot injury. After arrival of the police, the dead body was carried to Naugachia for *post-mortem*. On examination of evidence of this witness in paragraph-2, it is evident that after hearing sound of gun shot, other witnesses had arrived. However, in the evidence of other witnesses, this fact has not come that they had seen the informant with the deceased. He stated that *fardbeyan* was recorded at the place of occurrence and he put his signature and he identified his signature, which was marked as Ext.1. In paragraph-6 of his cross-examination, he stated that on the date of occurrence, he



alongwith deceased was going to court for doing *pairvi* and he & his uncle Mukti Mandal (deceased) were accused in the said case. In paragraph - 10, he stated that murder had taken place on road and at that very time, 8-10 round of firing was made, however; he had not seen any fire cartridge at the place of occurrence. In paragraph-11 of his cross-examination, he stated that *Darogaji* had seized the dead body at the place of occurrence and paper was also prepared, on which, he put his signature. Besides him, Manoj (C.W.2), Rajesh (C.W.1) and Mani (C.W.4) had also put their signature, however in the evidence of C.W.2 and C.W.1, this fact has not come as to whether they had put any signature or not. This also creates some suspicion and gets some support regarding submission made by learned counsel for the appellants that first version of prosecution was suppressed. His attention was drawn to his previous statement, which fact has been noticed in paragraph-6 of his cross-examination, however in view of evidence of investigating officer, it appears that the defence was seriously prejudiced and due to incapability of investigating officer, they failed to get contradiction from the previous statement of witnesses recorded during investigation. In number of paragraphs, particularly in paragraph-22 of his cross-examination, he stated that on the person of the deceased, four



shot of firing was made, however this stand is not corroborated on perusal of the *post-mortem* examination report, which suggests that only three shot of firing was made on deceased and one injury on the back as exit wound.

19. C.W.4 Mani Mandal has not, at all, supported the prosecution case and as such, he was declared hostile.

20. C.W.5 Ram Sharan Mandal, though has identified his signature on the inquest report, has categorically stated in his cross-examination that police had obtained his signature on a paper (inquest report), but the said paper was not prepared in his presence.

21. C.W.6 Sashi Shekhar Chaudhary was a Pharmacist in Naugachia Hospital and he has come forward to claim that he was conversant with the writing and signature of Dr. M. Chattarjee, who had prepared the *post-mortem* report, which was marked as Ext.3. In this case, the doctor, who prepared the *post-mortem* report, has not come forward to depose nor any explanation has been given by the prosecution as to whether on the date of evidence, the doctor (i.e. Dr. M. Chatterji) was alive or not nor any other doctor, conversant with the writing and signature of the said doctor, who conducted *post-mortem*, has come forward to depose and as such, in absence of medical



expert, certainly the defence was prejudiced to ask any relevant question on the point of injury found on the dead body of the deceased. But on perusal of Ext.3 i.e. *post-mortem* report, it is evident that following facts have been noticed by the doctor:-

“(i) Lacerated wound on the right upper chest just below nipple $\frac{1}{2}$ ” x $\frac{1}{2}$ ” x chest cavity deep with inverted margins and tattooing at arms (wound of entrance).

(ii) Lacerated wound on the right upper back of the lower end of scapular $\frac{3}{4}$ ” x $\frac{3}{4}$ ” x chest cavity deep with everted margins (wound of exit)

Injury no. (i) & (ii) are connecting to each other.

(iii) Lacerated wound right lower chest on the middle $\frac{1}{2}$ ” x $\frac{1}{2}$ ” x chest cavity deep with inverted margins and tattooing at arms (wound of entrance)

(iv) Lacerated wound on the left side of long portion of back $\frac{3}{4}$ ” x $\frac{3}{4}$ ” x chest cavity deep with everted margins (wound of exit)

Injury No. (iii) & (iv) are connecting to each other.

(v) Lacerated wound on the left side of skull with temporal region $\frac{1}{2}$ ” x $\frac{1}{2}$ ” x bone brain deep with tattooing at arms (wound of entrance).

(vi) Lacerated wound on the right temporal region of skull 1” x $\frac{1}{2}$ ” x bone brain deep. (wound of exit).

Injury No. (v) & (vi) are connecting to each other.

On opening of skull- right and left temporal bone found fractured with laceration of membrane & brain matter.

On opening of chest cavity- cavity full of blood & clot. 5th right rib in front and 8th in back right fractured with laceration of right lung. Left kidney and liver lacerated. Stomach perforated.

Above noted injury are caused by fire arm – fired from distance of less than four feet.

Opinion - Death occurred due to haemorrhage and shock as a result of above noted injuries.

Time elapsed since death – about 24 hrs.”

22. On examination of the *post-mortem* report, it is evident that the deceased had received three shot of firing. Three entry wounds and three exit wounds communicating to each other. There is no entry injury on the back side, however it is



consistent case of the prosecution that first firing on the deceased was made from the back side and after getting said injury, he fell down and thereafter, another firing was made. On examination of entire evidence, particularly *post-mortem* examination report, certainly the presence of so-called eye-witnesses comes into the cloud of doubt and as such, relying on such evidence, it would not be safe to approve the judgment of conviction and sentence.

23. After the conclusion of the prosecution evidence, no plausible explanation has been given as to why on three dates, statement of accused under Section 313 of the Cr.P.C. was recorded, however on examination of their statement under Section 313 of the Cr.P.C., it is evident that only formality was done otherwise, the circumstances and materials, which were brought on record during the trial, were not exactly explained to the accused persons for any clarification and as such, it was no compliance of provision under Section 313 of the Cr.P.C.

24. On examination of entire aforesaid evidence, we are of the considered opinion that the prosecution has not been able to establish its case beyond all reasonable doubt and as such, by way of extending benefit of doubt, it is desirable to interfere with the judgment of conviction and sentence.



25. Accordingly, the judgment of conviction dated 08-05-2013 and order of sentence dated 16-05-2013 passed in Sessions Trial No. 303 of 1997 (arising out of Gopalpur P.S. Case No. 164 of 1995) by Sri Chandrama Singh, learned 5th Additional Sessions Judge, Naugachia is, hereby, set aside and both the appeals are allowed.

26. Appellants Dilip Mandal and Baleshwar Mandal {in Cr. Appeal (DB) No. 478 of 2013} are inside jail and since the judgment of conviction and sentence has been set aside, they are directed to be released forthwith, if not wanted in any other case. Other appellants, who are on bail, are discharged from the liability of their bail-bonds.

(Rakesh Kumar, J.)

(Anil Kumar Upadhyay, J.)

Anay

AFR/NAFR	AFR
CAV DATE	NA
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