

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.321 of 1996

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Anil Mandal son of Sri Niwas Mandal, Resident of Quil Basti, Police Station
Lakhisarai and District Lakhisarai.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

=====

with
CRIMINAL APPEAL (DB) No. 342 of 1996

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Mantu Mandal Son of Shibam Mandal, resident of Village Kiul, Police Station
Lakhisarai, District Lakhisarai.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

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Appearance :

(In CRIMINAL APPEAL (DB) No. 321 of 1996)

For the Appellant : Mr. Indu Bhushan, Advocate
Ms. Priyanka Kumari, Advocate
Mr. Prashant Kumar (Amicus Curiae)

For the State : Mr. Dilip Kumar Sinha, APP

(In CRIMINAL APPEAL (DB) No. 342 of 1996)

For the Appellant : Mr. Arjun Prasad Keshri, Advocate
Mr. Prashant Kumar (Amicus Curiae)

For the State : Dr. Mayanand Jha, APP

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CORAM: HONOURABLE MR. JUSTICE SUDHIR SINGH
and
HONOURABLE MR. JUSTICE CHANDRA PRAKASH SINGH
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE SUDHIR SINGH)

Date : 19-10-2022

Heard learned counsel for the appellants and learned APP
for the State.



2. Both these appeals arise out of same judgment of conviction and order of sentence, hence they have been heard together and are being disposed of by this common judgment.

3. The present criminal appeals have been preferred in the year 1996 i.e., around 26 years ago, against the judgment of conviction and order of sentence dated 29.06.1996 passed by the 1st Additional Sessions Judge, Munger in Sessions Case No. 32/1994 (arising out of Lakhisarai P.S. Case No.149/1993, whereby and whereunder the learned Trial Court has convicted both the appellants, namely, Anil Mandal (appellant in Cr. Appeal (DB) No. 321 of 1996) and Mantu Mandal (appellant in Cr. Appeal (DB) No. 342 of 1996) under Sections 302/34 of the Indian Penal Code and further appellant Mantu Mandal has been convicted under Section 302 of the Indian Penal Code and 27 of the Arms Act. Appellant Anil Mandal is sentenced to undergo R.I. for life for the offence under Section 302 of the Indian Penal Code and further sentenced to undergo rigorous imprisonment for a period of five years under Section 27 of the Arms Act, whereas appellant Mantu Mandal is sentenced to undergo R.I. for life for the offence under Section 302/34 of the Indian Penal Code. The sentences awarded against the appellant Anil Mandal were directed to run concurrently. The learned Trial court has further ordered that the



period of custody undergone during trial by the appellants shall be set off from the period of sentence under Section 428 of the Cr.P.C.

4. When the appeal was taken up on 26.07.2022, there was no representation on behalf of the appellants in both the appeals. Therefore, this Court in the interest of justice deemed it appropriate to appoint Mr. Prashant Kumar as Amicus Curiae to assist this Court on behalf of the appellants at the cost of the State. However, later on, the learned counsel for the appellants has appeared.

5. The present case has been registered on the basis of fardbeyan of one Kailash Das (P.W.13), who happens to be the Informant of this case, recorded on 11.05.1993 at 8.35 p.m. wherein he has stated that on the same day at 7:30 p.m. while he was talking at the shop of Baiju Bandal, his sons Raj Kumar (deceased) and Dharmendra Kumar were also present in the grocery shop owned by the informant, which is situated beside the shop of Baiju Mandal. Thereafter, accused Mantu Mandal @ Vinod Mandal, Anil Mandal and two unknown persons came over there and called his son Raj Kumar and when his son came out, a quarrel (lattapatti) took place on which the informant asked as to why they are doing so and in the meantime, appellant Anil Mandal took out a pistol and fired upon his son Raj Kumar (deceased), due



to which the deceased fell down and lot of blood started coming out of his body. Thereafter, appellant Mantu Mandal got a bomb exploded and then they fled towards the field of K.R.K. School. The informant further narrated in his fardbeyan that after the said incident took place, he alongwith the help of other persons brought the deceased before Dr. Ajit Kumar, who after seeing the deceased declared him dead and then he brought the dead body of the deceased to his house, where the police also came. The informant further stated that the occurrence was witnessed by Shambhu Das (P.W.10), Rajendra Kumar (P.W.9), Anil Singh (not examined), Shikhar Goswami (P.W.2) and others. The informant further alleged that the motive behind the occurrence is that on 26.4.1993 one Jitendra Kumar and Bablu Kumar (son of the informant) had purchased ice cream from appellant Mantu Mandal (appellant) and some altercation had taken place for payment of money and on the next day, the deceased had gone to the house of appellants Mantu Mandal (appellant) and Anil Mandal (appellant) to warn them and upon which both of them got a bomb exploded on the shop of the informant on the same day. The other motive behind the occurrence was that the deceased performed love marriage with the sister of Dinesh Gupta and Arun Gupta which they did not like and they used to continuously threaten the informant of causing



death. Thus the informant claimed that Dinesh Kumar Gupta and Anil Mandal (appellant) used to meet and he believed that Dinesh Kumar Gupta, Mantu Mandal (appellant) and Anil Mandal (appellant) had decided together to cause death of the deceased.

6. On the basis of aforesaid fardbeyan, Lakhisarai P.S. Case No.149/93 was instituted under Sections 302/34 of the Indian Penal Code, 27 of the Arms Act and 3/5 of Explosive Substances Act. Thereafter investigation was taken up. After completion of investigation, the police submitted charge-sheet against the appellants and others. Accordingly, cognizance was taken by the jurisdictional Magistrate and the case was committed to the Court of Sessions. Subsequently, the charges were framed to which the appellants pleaded not guilty and claimed to be tried.

7. During trial, the prosecution examined altogether 16 witnesses, namely, Suresh Prasad Sah (P.W.1), Chandra Shekhar Goswami (P.W.2), Ganesh Bhagat (P.W.3), Ajay Kumar (P.W.4), Kumud Kumari Gupta (P.W.5), Kundan Kumar (P.W.6), Radhey Sah (P.W.7), Manoj Kumar (P.W.8), Shambhu Das (P.W.9), Shambhu Das (P.W.10), Dr. Arjun Prasad Singh (P.W.11), Dinesh Jha (P.W.12), Kailash Das (P.W.13), Satya Dev Singh (P.W.14), Dr. Ajit Kumar (P.W.15) and Durga Nand Jha (P.W.16). In support of its case, the prosecution has produced exhibits, namely, Ext. 1 and



1/1 (signatures on seizure list), Ext. 2 (letter), Ext. 3 (signature on inquest report), Ext. 4 (postmortem report), Ext. 5 (fardbeyan), Ext. 6 (F.I.R.), Ext. 1/2 (signature on handwritten application), Ext. 7 (sanction report), Ext. 8 (F.I.R.), Ext. 9 (inquest report), Ext. 10 (seizure list), Ext. 11 (Aghat Pad), Ext. 12 (injury report), Ext. 13 to 13/A (Sanha) and Ext. 14 (protest petition). The defence has examined only one witness, namely, Mahendra Ram (D.W.1) and one exhibit, namely, Ext. A (affidavit dated 22.5.93) in support of its case. P.W.13 is the informant of the case, who also claims himself to be an eye witness to the case, P.W.16 is the Investigating Officer of the case, P.W.11 is the doctor, who conducted postmortem examination on the body of the deceased, P.W.9 and P.W.10 are mentioned in the fardbeyan as an eye witness to the occurrence.

8. It has been submitted on behalf of the appellants that the informant is not an eye witness to the occurrence as his presence at the place of occurrence is doubtful and the testimony of the informant suffers from material contradictions and thus it cannot be relied upon to sustain the conviction of the appellants. It is further argued that after appreciation of deposition of the witnesses, who are named in the fardbeyan as an eye witness to the occurrence, it would be evident that they are not eye witness to the



occurrence and, as such, their testimonies cannot be relied upon. Furthermore, it has been submitted that the prosecution has miserably failed to prove the manner of occurrence beyond the shadow of reasonable doubt and in same vein it has been argued argued that the prosecution has also failed to prove the place of occurrence beyond reasonable doubt. Moreover, the motive may not be *sine qua non* for arriving at the guilt of the accused persons in the case of direct ocular evidence. However, when the version of the sole eye-witness becomes doubtful and somewhat less reliable, proper corroboration and proof of motive alleged in the FIR assumes significance in order to establish the guilt of the appellant. It has been argued that the prosecution has tried to establish two parallel motives, but has failed to adduce any evidence regarding the proof of motive against the present appellants. Therefore, when the evidence is considered in light of material improvements, material contradictions and substantial infirmities arising from the evidence adduced by the prosecution, it is unquestionable that the prosecution has failed to discharge its burden which is to prove its case beyond the shadow of all reasonable doubts.

9. Learned A.P.P. for the State has submitted that the judgment of conviction and order of sentence under challenge requires no interference as the prosecution has been able to prove



its case beyond all reasonable doubts. From the evidence, which has been adduced by the prosecution, the guilt of the appellants is satisfactorily proved and there is no infirmity in the judgment of conviction and order of sentence rendered by the Trial Court.

10. After hearing the arguments advanced by the learned counsel appearing for the parties and perusing the materials available on record, following issues arise for consideration in both the appeals:-

(I) Whether after appreciation of the depositions of P.W.9 and P.W.10 they can be said to be eye-witness to the alleged occurrence?

(II) Whether the evidence adduced by P.W.13, claiming himself to be an eye witness, can be relied upon in the facts of the given case?

(III) Whether the prosecution has been able to prove the manner and the place of occurrence beyond all reasonable doubt?

(IV) Whether the prosecution has been able to prove the motive beyond reasonable doubt?

11. Now we advert ourselves to the consideration of first issue as formulated above. P.W.9 in paragraph 1 of his deposition (examination-in-chief) stated that he was at the shop where he heard one gun shot and after sometime he also heard explosion of one bomb. Thereafter he saw six persons running towards the field



of K.R.K. School, in which he identified four persons, namely, Dinesh Gupta, Anil Mandal (appellant), Arun Gupta and Mantu Mandal (appellant). He also stated that he saw pistol in the hands of Dinesh Gupta and Anil Mandal (appellant) and *jhola* in the hands of Arun Gupta and Mantu Mandal (appellant). When he reached the place, he found that the deceased was lying on the ground before the shop. He also stated that his father (the informant of the present case) told him that Mantu Mandal (appellant) and Anil Mandal (appellant) fired upon the deceased. The witness in paragraph 2 of his deposition (examination-in-chief) stated that after the said incident the deceased was taken to the Hospital, where the doctor declared him dead. Whereas, P.W.10 in paragraph 1 of his deposition (examination-in-chief) stated that while he was urinating in the field of K.R.K. School, he heard the sound of firing and also heard the explosion of bomb and in the meantime when he reached at the shop of one Lakhan Singh, he saw six persons running away in which he identified four persons, namely, Dinesh Gupta, who was carrying pistol in his hand, Anil Mandal (appellant), who was also carrying pistol in his hand and Arun Gupta and Mantu Mandal (appellant), who were carrying *jhola*. The witness in paragraph 2 of his deposition (examination-in-chief) stated that after the said incident when he



reached to the place, he saw 50-60 persons had already reached there and the informant was crying continuously and said that the appellants Anil Mandal and Mantu Mandal after firing upon the deceased fled away. The witness in paragraph 3 of his deposition (examination-in-chief) stated that he alongwith other persons took the deceased to Dr. Ajeet Kumar, who declared him dead. The Investigating Officer (P.W.16) in paragraph 11 of his deposition (cross-examination) stated that at the place where the occurrence is alleged to have taken place he had neither found any residue nor any sign of explosion of bomb. The Investigating Officer (P.W.16) also stated in paragraph 29 of his deposition (cross-examination) reiterated the same statement in paragraph 11 regarding the absence of any explosion of bomb at the said place. Further P.W.15 Dr. Ajeet Kumar has in his deposition neither stated that the deceased was brought before him in the Hospital nor had he declared the deceased dead. P.W. 10 in paragraph 5 of his deposition (cross-examination) stated that he told to the police officer that he saw accused persons running away. The Investigating Officer in paragraph 31 of his deposition (cross-examination) stated that P.W.10 in his statement did not told that he heard the sound of one firing and one bomb explosion. He did not state that his brother told him that Mantu Mandal after hurling



the bomb fled away. Further P.W.1 in paragraph 9 of his deposition (cross-examination) stated that he reached to the house of deceased following the road from the place where the occurrence is said to have taken place, after which he informed the family members of the deceased and the witness further stated that no family members of the deceased was aware regarding the death of the deceased. Therefore deposition of the witness P.W.10 regarding his own presence, being the brother of the informant and the presence of the informant, P.W.13 suffers from a material contradiction. Further, the witnesses have not stated about source of identification, in the light of which they identified the appellants as the incident happened at 7.30 p.m. in the night. At this juncture, we would gainfully rely on the decision rendered by the Hon'ble Supreme Court in the case of ***Kapildeo Mandal an Ors. vs. State of Bihar reported in (2008) 16 SCC 99***, wherein the Hon'ble Supreme Court in paragraph 9 has observed the following: -

“9....The incident happened at 11.00 o'clock in the night. The witnesses have stated that they have seen the incident and recognised the appellants either in the torch-light or in the lantern-light which was burning at their house. It has come in evidence of the witnesses as well as the Investigating Officer that neither the torch



or the lantern was seized by the I.O. during the course of investigation nor was it produced before the court. In the circumstances, it is difficult to believe that the appellants have been identified in the torch-light or in the lantern-light.”

Therefore, applying the aforesaid view of the Hon'ble Supreme Court in the given facts of the case, we reach to the conclusion that source of identification is not proved by the evidence brought on record by the prosecution. In the light of material contradictions arising from the evidence of P.W.9 and P.W.10, it would not be safe to rely upon their evidence. Otherwise also, it is evident from the perusal of the depositions of P.W.9 and P.W.10 that they reached the place of occurrence after the hearing the sound of firing and explosion of bomb and, as such, they are not an eye witness to the occurrence and their testimonies having suffered from such infirmities cannot be cured and hence, relied upon to sustain the conviction of the appellants.

12. Before we advert ourselves to the appreciation of the evidence, in relation to the second issue, this Court deems it appropriate to briefly state the law as settled by the Hon'ble Supreme Court with regard to the appreciation of the evidence of sole eye witness suffering from material infirmities and



contradictions. The Hon'ble Supreme Court in *Anil Phukan Vs. State of Assam* reported in *AIR 1993 SC 1462* observed in paragraph 3 of the judgment, which is as follows :

“3.....Indeed, conviction can be based on the testimony of a single eye-witness and there is no rule of law or evidence which says to the contrary provided the sole witness passes the test of reliability. So long as the single eye-witness is a wholly reliable witness the courts have no difficulty in basing conviction on his testimony alone. However, where the single eye-witness is not found to be a wholly reliable witness, in the sense that there are some circumstances which may show that he could have an interest in the prosecution, then the courts generally insist upon some independent corroboration of his testimony, material particulars, before recording conviction. It is only when the courts find that the single eye witness is a wholly unreliable witness that his testimony is discarded into and no amount of corroboration can cure that defect. It is in the light of these settled principles that we shall examine the testimony of P.W.3 Ajoy.”

(emphasis supplied)



In light of the law settled by the Hon'ble Supreme Court, we shall appreciate the evidence of P.W.13, the informant of the present case, who claims himself to be an eye witness to the occurrence. P.W.13 in paragraphs 1 and 2 of his deposition has substantially corroborated the manner of occurrence narrated by him the fardbeyan. But P.W.1 in paragraph 2 of his deposition (examination-in-chief) stated that after he reached the shop of the deceased, he found the deceased lying there. Thereafter, he went to the house of the deceased and informed the wife of the deceased regarding the said incident. In paragraph 9 of his deposition (cross-examination), P.W.1 further stated that when he reached to the house of deceased by following the road from the place where the occurrence is said to have taken place, he informed the family members of the deceased and the witness further stated that none of the family members of the deceased were aware regarding the death of the deceased. Thus, this statement of P.W.1 creates doubt on the presence of the informant at the place of occurrence and also being an eye witness to the said incident. The doubt on the presence of informant as an eye witness stands further corroborated as P.W. 13, the informant, categorically stated in paragraph 2 (examination-in-chief) of his deposition that he took his son to Dr. Ajit (P.W.15), who declared his son dead. But Dr. Ajit, P.W.15



never states anything in relation to such occurrence in his entire deposition. He does not state anything regarding the incident that the deceased was brought before him and he after examining the deceased declared him dead. The informant in paragraph 1 of his deposition (Examination-in-chief) stated that Mantu Mandal after hurling the bomb fled away towards the field of school. But the Investigating Officer (P.W.16) in paragraph 11 of his deposition (cross-examination) deposed that at the place where the occurrence is alleged to have taken place he neither found any residue nor any sign of explosion of bomb. The Investigating Officer (P.W.16) also stated in paragraph 29 of his deposition (cross-examination) wherein he reiterated his earlier statement made in paragraph 11 regarding the absence of any explosion of bomb at the said place. Thus, after the appreciation of the evidence, it is evident that there arises material contradictions, in the deposition of the informant, P.W.13, deposition of P.W.1, deposition of P.W.15 and the deposition of Investigating Officer, P.W. 16 with respect to the manner of occurrence and in light of the principle settled through the judicial precedent discussed above, we are of the firm view that P.W.13 as a sole eye witness is wholly unreliable witness and his testimony shall be discarded in light of such infirmities and material contradictions, which creates such defect in the case of



prosecution that no amount of corroboration can cure that defect and, as such, the deposition of P.W.13 as an eye witness to the occurrence cannot be relied upon to bring home the guilt of the appellants.

13. Now coming to the third issue, the Informant in his fardbeyan as well as in paragraph 1 of his deposition (examination-in-chief) stated about the explosion of bomb on the place where the incident is said to have taken place. The explosion of the bomb at the place of occurrence is very important part of the prosecution story as narrated by the informant in the fardbeyan and corroborated by his testimony. But the Investigating Officer (P.W.16) in paragraph 11 of his deposition (cross-examination) deposed that at the place where the occurrence is alleged to have taken place he neither found any residue nor any sign of explosion of bomb. The Investigating Officer (P.W.16) also stated in paragraph 29 of his deposition (cross-examination) reiterated his earlier statement made in paragraph 11 regarding the absence of any explosion of bomb at the said place. Further, the post-mortem report states that the death was caused due to firearms and does not state anything about the presence of residue of bomb in the body of the deceased person or any injury on the body of the deceased caused by the explosion of bomb. The doctor in his deposition did



not depose anything in relation to the presence of residue of bomb explosion or presence of the injury caused due to bomb explosion on the body of the deceased person. Neither the inquest report discloses any physical injury caused due to the explosion of bomb. Therefore, in light of the material contradictions, with respect to the manner and place of occurrence, arising from the deposition of informant, Investigating Officer and the doctor, who conducted the post-mortem examination, the prosecution has failed to prove the place and manner of occurrence beyond the shadow of reasonable doubt.

14. Now, coming to the fourth issue, the prosecution has tried to establish two parallel motives one which find its place in the fardbeyan of the informant and subsequently in paragraph 4 of the deposition (examination-in-chief) of his deposition wherein he states that his three sons took ice cream from Mantu Mandal. Both the appellants used to sell ice creams and in the meantime due to the issues of money there was a fight (*lappad thappad*) and after the said incident deceased warned the appellants after which the appellants hurled bomb on their shop in which Shambu Das (P.W.10), the brother of the informant was injured. But no evidence has been brought on record by the prosecution, in affirmation of the said motive. P.W.10 in his evidence does not state anything



regarding the said motive though he specifically states in Paragraph 8 of his deposition (cross-examination) about another motive related to the dispute in marriage between his wife's brother and the deceased which find its existence in the deposition of P.W.5. Further, from the deposition of P.W.5, the wife of the deceased, her testimony appears to be that of the most natural and reliable witness regarding the motive of the crime wherein she attributes the involvement of her brothers in the present case, who were also made accused, but were acquitted by the learned Trial Court. She neither in her statement recorded before the police during the course of investigation nor in her deposition attributes any motive towards the present appellants. Therefore, the prosecution has not been able to establish the motive, alleged against the present appellants, in order to sustain the conviction.

15. In view of the findings arrived at on the issues formulated above, we reach to the conclusion that the prosecution has failed to prove the charges against the appellants beyond all reasonable doubts and, therefore, the conviction of the appellants cannot be sustained.

16. In the result, both the appeals are allowed. The judgment of conviction and the order of sentence dated dated 29.06.1996 passed by the 1st Additional Sessions Judge, Munger



in Sessions Case No.32/1994 (arising out of Lakhisarai P.S. Case No.149/1993) is set aside. Since the appellants are on bail, they are discharged from the liabilities of their respective bail bonds.

17. We cannot part away with this appeal, without recording our appreciation for the sincere efforts and able assistance given by Mr. Prashant Kumar, learned advocate appointed as Amicus Curiae, at the cost of the State, to represent the appellant. This Court cannot quantify the labour put by him in this case, however, as a gesture of appreciation, we direct the Patna High Court Legal Services Committee to pay a sum of Rs.5000/- to Mr. Prashant Kumar, learned advocate, appointed as Amicus Curiae by this Court by order dated 26.07.2022.

(Sudhir Singh, J)

(Chandra Prakash Singh, J)

Narendra/-

AFR/NAFR	NAFR
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