

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.23 of 2021**

Arising Out of PS. Case No.-129 Year-2018 Thana- MAIRWAN District- Siwan

ISRAQUE MIA @ ISRAQUE ALAM Son of Samid Mia Resident of Village-
Miskarhi Mathia, P.S.- Maiwa, District- Siwan.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with

CRIMINAL APPEAL (DB) No. 297 of 2020

Arising Out of PS. Case No.-129 Year-2018 Thana- MAIRWAN District- Siwan

ALAMGIR Son of Samid Mia Resident of Village-Miskarhi, P.S.-Mairwah,
District-Siwan.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

(In CRIMINAL APPEAL (DB) No. 23 of 2021)

For the Appellant/s : Mr. Ajay Kumar Thakur, Advocate
Mrs. Kiran Kumari, Advocate
Md. Imteyaz Ahmad, Advocate
Mrs. Vaishnavi Singh, Advocate
Mr. Ritwik Thakur, Advocate

For the Respondent/s : Ms. Shashi Bala Verma, APP

(In CRIMINAL APPEAL (DB) No. 297 of 2020)

For the Appellant/s : Mr. Sanjeev Kumar, Advocate
Mr. Satyendra Rai, Advocate

For the Respondent/s : Ms. Shashi Bala Verma, APP

For the Informant : Mr. Bijay Prakash Singh, Advocate

**CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN
SINGH**

and

HONOURABLE MR. JUSTICE JITENDRA KUMAR

ORAL JUDGMENT

**(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN
SINGH)**

Date : 13-09-2023



These appeals have been preferred by the appellants under Section 374(2) of the Code of Criminal Procedure, putting to challenge the impugned judgment of conviction dated 03.01.2020 and the order of sentence dated 09.01.2020, passed by learned Additional District and Sessions Judge-IV, Siwan in Sessions Trial No. 421 of 2018, arising out of Mairwan P.S. Case No. 129 of 2018, whereby the appellants have been convicted and sentenced as under:

Cr. Appeal (DB) No. 23 of 2021				
Appellant	Penal Provision	Sentence		
		Imprisonment	Fine (Rs.)	In default of fine
Israque Mia @ Israque Alam	Section 302 of the IPC	For life	25,000/-	S.I for six months
	Section 27 of the Arms Act	For seven years	20,000/-	S.I for six months
Cr. Appeal (DB) No. 297 of 2020				
Appellant	Penal Provision	Sentence		
		Imprisonment	Fine (Rs.)	In default of fine
Alamgir	Section 302/34 of the IPC	For life	25,000/-	S.I. for three months

2. All the sentences have been ordered to run concurrently.

3. Since both the appeals arise out of the same judgment and order of the trial court, they have been heard together and are being disposed of by present common judgment and order. The father of the deceased, Ganny Anwar (PW-6) is the informant on whose written statement addressed to the Officer-in-charge of



Mairwan (Siwan) police station dated 11.04.2018, is said to be the basis for registration of Mairwan P.S. Case No. 129 of 2018 on 11.04.2018, disclosing commission of the offences punishable under Sections 302, 201 read with Section 34 of the IPC and Section 27 of Arms Act. From the FIR, it appears that the appellant Israque Mia @ Israque Alam was running a grocery shop. According to the FIR, at about 2:00-2:30 PM on 11.04.2018, his son Arbaz Ali had gone to the appellant's shop for purchasing detergent powder. It further emerges from the FIR that the detergent powder which said Arbaz Ali had brought, was not found to be of desired make. Accordingly, Arbaz Ali went back to the appellant's shop again for exchange of the detergent powder which was declined by the appellant. Arbaz Ali was slapped also by the appellant when he was insisting upon for the exchange. This occurrence led to some altercation between the two parties which was later pacified. This is the background in which the occurrence is said to have taken place. Further, as per the FIR, the elder brother of Arbaz Ali, Salman, who is the deceased was going to Mairwan from his house and the moment he came out of his house, the appellant Israque Mia shot at him with a pistol into his head and made two further fires. Later, Israque Mia fled away with his brother Alamgir, the appellant in Cr. App.(DB) 297 of 2020



and one Asfaque Mia on a motorcycle. By the time, the informant reached there, the deceased had already died. From the formal FIR, it transpires that the place of occurrence was 1Km from the police station. According to the FIR, the occurrence had taken place at about 2:00-2:30 PM and the FIR was registered at 4:45 PM after the receipt of the information about the occurrence. It is also pertinent to notice at this juncture itself that the inquest report (Exhibit-2) was prepared at 3:30 PM and according to the inquest report, the dead body was lying in front of the house of the appellant Israque Mia. The dead body was subjected to postmortem examination which was conducted at 5:40 PM. The doctor found following external and internal injuries.

“1. External Injuries:

Entry wound:

1. Right laterla side of frontal bone $\frac{3}{4}$ ” in diameter with charge margin.
2. Right parital region of scalp $\frac{3}{4}$ ” with charge margin.

Exit wound:

1. Left temporal region two would of sine 1” with blood and clot bleeding from both ear.

2. On dissection:

A. Head: Rupture right lateral frontal right parietal left temporal wound with rupture brain parenthym with blood.

B. Chest:

Lungs- Right and left intact and pale.

Heart- Both chamber are empty.

C. Abdomen:

Stomach- Semi digested food material present.



Liver- Intact.

Spleen- Intact.

Kidney- Intact.

D. Urinary Bladder- empty

E. Cause of death- Haemorrhag and shock due to above mentioned injuries caused by fire arms injuries.

F. Time elapsed since death to P.M. less than 06 hours.”

4. The police, upon completion of investigation submitted chargesheet against Israque Mia and Alamgir (the appellants) whereupon cognizance was taken and the case was committed for trial. The charges were later framed for commission of offences punishable under Section 302/34 of the IPC and Section 27 of the Arms Act against these appellants who denied the charges and claimed to be tried.

5. At the trial, altogether 8 witnesses came to examined including the IO (PW-7), the doctor who had conducted the postmortem examination (PW-8), the informant (PW-6) and son of the informant, Md. Dabloo Mia (PW-1). Other four witnesses, namely, Ayub Mia (PW-2), MD Naasif (PW-3), Kedar Prasad (PW-4) and Kamru Jama (PW-5) came to be declared hostile, as they did not support the prosecution's case. It may be noted at this stage that PW-1 is an attesting witness to the FIR. In addition to the oral evidence of the prosecution's witnesses, the prosecution also proved at the trial the written report which was the basis for



registration of FIR (Exhibit-3), formal FIR (Exhibit-4), the signature of the informant on the written report (Exhibit-1), the inquest report (Exhibit-2), seizure lists (Exhibit-5 and Exhibit-6), and the postmortem report with the signature of the doctors thereon (Exhibit-7, 7/1, 7/2).

6. After closure of the prosecution's evidence, the appellants were questioned under Section 313 of the CrPC so as to give them an opportunity to explain the incriminating circumstances emerging against them based on oral and documentary evidence adduced at the trial. The appellants denied the circumstances explained to them. The trial court, after having appreciated the evidence adduced at the trial reached a conclusion by the impugned judgment and order dated 03.01.2020 that the prosecution was able to establish beyond all reasonable doubts the charge of commission of offence punishable under Section 302 read with Section 34 of the IPC. The trial court further held the appellant Israque Mia guilty of commission of the offence punishable under Section 27 of the Arms Act and sentenced the two appellants to imprisonment as has been noted hereinabove.

7. Mr. Ajay Kumar Thakur, learned counsel appearing on behalf of the appellant has submitted that the finding of conviction recorded by the trial court is not based on due



appreciation of evidence adduced at the trial. He has submitted that there are patent inconsistencies in the evidence of the witnesses not only about the place of occurrence but also the manner of occurrence. He has also argued that the narration by the informant about the occurrence in the FIR is not duly corroborated by the postmortem report. He has drawn the Court's attention to the evidence of the informant (PW-6) to contend that firstly, he does not appear to be an eye-witness to the occurrence and secondly, he does not appear to be the author of the written report and according to his own deposition, his signature was obtained on something which was already written by someone who has not been examined at the trial. He has also submitted that according to the evidence of the prosecution's witnesses, it has emerged that the occurrence had taken place in a *pakodi* shop of PW-3. The place of occurrence as described by the IO in his deposition would suggest that in no circumstance the informant could have seen the occurrence taking place. He has further submitted that on close scrutiny of the evidence of the witnesses, it can be easily noticed that the place of occurrence was at a considerable distance from the house of the informant and he could not have seen the occurrence taking place soon after coming out from his house. He contends that the owner of the *pakodi* shop, where the deceased



was shot at, has not supported the prosecution's case and accordingly, he has been declared hostile. He accordingly submits that the prosecution cannot be said to have proved the charge of commission of the offences against these appellants beyond all reasonable doubts.

8. Learned Additional Public Prosecutor appearing on behalf of the State has submitted that it can be seen from the evidence of the witnesses that the *pakodi* shop where the occurrence had taken place was located on a highway and the house of the informant was located in a narrow street going towards south. The shop was at the corner of the narrow lane and the highway. She submits that in such circumstance, it would have been possible for the informant to have seen the occurrence. She further submits that an FIR is not expected to contain accurate description of the entire occurrence. The prosecution's witnesses have clearly deposed that the fire was opened by the appellant Israque Mia and the postmortem report demonstrates that the deceased died of firearm injury caused in his right lateral side of parietal bone. She has further submitted that it is evident from the deposition of PW-1 that he was accompanying the deceased at the time of occurrence and, therefore, he has been rightly treated by the trial court to be an eye-witness. She accordingly, submits the



finding of conviction recorded by the trial court does not suffers from any legal infirmity requiring this Court's interference.

9. We have perused the impugned judgment and order of the trial court as well as the trial court's records. We have given our thoughtful consideration to the rival submissions advanced on behalf of the parties.

10. After having noticed in detail the written statement of the informant which is the basis for registration of the concerned FIR, in the facts and circumstances of the present case, we consider it apposite to refer to the evidence of the informant PW-6 first, in view of the submissions advanced on behalf of the appellants. PW-6 supported the prosecution's case to the extent it related to the altercation and the dispute which had arisen because of refusal by the appellant Israque Mia to exchange the detergent powder. In his examination-in-chief, he introduced altogether a different story about the place of occurrence which was not there in his written report. He deposed that at the time of occurrence, the deceased was having *pakodi* in the shop of PW-3 when he (the deceased) had received a call on his mobile phone. When he was talking on his mobile phone, the appellant Israque Mia came from behind and shot at the deceased whereafter, he fled away with the co-convict Alamgir on a motorcycle. Co-accused Asfaque was also



sitting on the motorcycle. All the three fled away brandishing their firearms. Thereafter, he attempted to lift the body of the deceased for being taken to the hospital, but, in the meanwhile, the deceased had died. Apparently, thus, the informant described in his evidence at the trial the place of occurrence to be *pakodi* shop of PW-3. Further, according to him the deceased was shot in his head from behind. In his cross-examination, PW-6 deposed that he did not know as to who had written the written report which was not prepared in his presence. He further deposed in his cross-examination that he had put his signature on the written report. He also deposed that the deceased, after having sustained firearm injury, had fallen on a table in the *pakodi* shop. It is significant to note that according to PW-6 the police had inquired from him as to whether the body should be taken for postmortem examination, he had initially declined. Subsequently, on persuasion of other persons, he had allowed the dead body to be taken by the police for postmortem examination. He deposed in categorical terms that there was no interaction with the police at the place of occurrence and three days thereafter, he had met the police officer and a Superintendent of Police. For three days he had no opportunity to discuss about the occurrence with anyone else. Describing the place of occurrence, i.e., the shop of Naafis, vis-a-vis, the house



of the informant, he deposed at the trial that about 10 to 12 steps on the west of the shop, a passage 5 ft. wide goes towards south in which his house is located in a 5 ft.-wide lane. There is a *Dharamshala* located at the corner from where the lane begins. It is thus, apparent from the evidence of PW-6 that he could not have seen the occurrence taking place in the shop of Naafis which according to his evidence was not at the corner connecting the lane with the highway.

11. It is also pertinent to note that the informant deposed in paragraph 34 that his son Md. Dabloo Mia (PW-1) was the first to give written report to the police, acting upon which the police had reached the place of occurrence. He further deposed that after he had reached the place of occurrence, so many persons assembled including his children Md. Dabloo Mia (PW-1), Sultan (not examined), Arbaz Ali (not examined).

12. Four things emerge from the deposition of the informant (PW-6). Firstly, he had not seen the occurrence taking place. Secondly, according to him, PW-1 had reached the place of occurrence after PW-6. Thirdly, the police had arrived at the place of occurrence based on some written application given by him to the police. The information which was given by PW-1 to the police, pursuant to which the police arrived at the place of



occurrence has not been brought on record by way of evidence. Fourthly, the informant was not present when the written report, which is the basis for registration of FIR, was prepared and his signature was obtained on a prepared written report.

13. After having noticed the evidence of PW-6, we deem it proper to deal with the evidence of PW-1. According to him, at about 02:00-02:30 pm, the deceased was at the *pakodi* shop, when he (PW-1) was also accompanying him, when the appellant Israque Mia came, took out the pistol and fired twice at the deceased from behind, one shot hitting his head and the other, his neck. Thereafter, the appellant Alamgir and Asfaque came on a motorcycle and took away the appellant Israque Mia from the place of occurrence. The deceased died instantaneously. He also deposed that after the occurrence had taken place, so many persons including Md. Ayub Mia, Kamru Jama, Kedar Prasad came at the place of occurrence. It is noteworthy that Ayub Mia (PW-2), Kamru Jama (PW-5) and Kedar Prasad (PW-4) have been declared hostile, they having not supported the prosecution's case at the trial. He further deposed that the dead body of the deceased was taken by them to a place in front of the house of the appellant. The Investigating Officer (PW-7), in his deposition, has described the place of occurrence as *tea-pakodi* shop of Md. Naasif which had



opening towards south having a door made of tin and wood. The shop was covered from all sides. He (PW-7) deposed that the officer-in-charge of the police station, Sanjay Kumar was the first person to reach the place of occurrence after having heard the sound of firing. He had reached the place of occurrence at 05:15 PM, before which the FIR was registered. In his cross-examination, he deposed that the informant had not disclosed in his *fardbeyan* that the appellants and Asfaque had fled away from the place of occurrence, brandishing firearms. Two spent cartridges were recovered from the place of occurrence on 17.04.2018 which were sent for forensic examination. The report of forensic examination was not available and he had submitted the chargesheet without waiting for the report of the forensic examination as the statutory period of 90 days was going to expire.

14. The doctor (PW-8) proved the report of postmortem examination and the antemortem injury which was the cause of death as has been noted hereinabove. In his cross-examination, he deposed that there were only two injuries, one was wound of entry and the other was wound of exit. This apparently does not support the prosecution's case on two grounds. Firstly, it is the specific case of the prosecution that the fires were shot from behind on the head and the neck of the deceased whereas no entry wound has



been found on the back portion of the head in the postmortem report. Further, there is no injury on the neck of the deceased.

15. Upon perusal of the evidence of the prosecution's witnesses-2, 3, 4 and 5 who have been declared hostile at the instance of the prosecution, nothing can be culled out to support the prosecution's case in any manner. The prosecution's witnesses who have claimed themselves to be the eyewitnesses do not appear to be the eyewitnesses, based on a close scrutiny of their own depositions. According to the informant, the police were informed about the occurrence by PW-1, whereupon the police had come. The nature of information given to the police, i.e., the first version of the occurrence has been suppressed by the prosecution. According to the I.O. himself, the Station House Officer Sanjay Kumar was the first police officer to reach the place of occurrence as he had proceeded to the place of occurrence after having heard the gunshot firing. Sanjay Kumar has not been examined at the trial.

16. Taking into account all the facts and circumstances of the case, we find patent contradictions in the evidence of the prosecution's witnesses, i.e., PW-1 and PW-6. In such view of the matter, in our opinion, it cannot be held that the prosecution proved its case against these appellants beyond all reasonable



doubts. The benefit of doubt, in the facts and circumstances as noticed above must go in favour of the appellants. Accordingly, the appellants stand acquitted of the charges by giving them benefit of doubt.

17. The impugned judgment of conviction dated 03.01.2020 is hereby set aside. The order of sentence dated 09.01.2020 also stands set aside. This appeal is allowed.

18. The appellant, namely, Alamgir of Criminal Appeal (DB) No. 297 of 2020 is on bail. He stands discharged from the liability of the bail bonds and sureties, if any.

19. The appellant, namely, Israque Mia @ Israque Alam in Criminal Appeal (DB) No. 23 of 2021 is in custody. Let him be released from jail forthwith, if not required in any other case.

20. After having recorded acquittal of these appellants, we may not lose sight of the provision under Section 357A of the CrPC which contemplates Victim Compensation Scheme and reads as under:

“1. Every State Government in co-ordination with the Central Government shall prepare a scheme for providing funds for the purpose of compensation to the victim or his dependents who have suffered loss or injury as a result of the crime and who, require rehabilitation.



2. Whenever a recommendation is made by the Court for compensation, the District Legal Service Authority or the State Legal Service Authority, as the case may be, shall decide the quantum of compensation to be awarded under the scheme referred to in sub-section (1).

3. If the trial Court, at the conclusion of the trial, is satisfied, that the compensation awarded under section 357 is not adequate for such rehabilitation, or where the cases end in acquittal or discharge and the victim has to be rehabilitated, it may make recommendation for compensation.

4. Where the offender is not traced or identified, but the victim is identified, and where no trial takes place, the victim or his dependents may make an application to the State or the District Legal Services Authority for award of compensation.

5. On receipt of such recommendations or on the application under sub-section (4), the State or the District Legal Services Authority shall, after due enquiry award adequate compensation by completing the enquiry within two months.

6. The State or the District Legal Services Authority, as the case may be, to alleviate the suffering of the victim, may order for immediate first-aid facility or medical benefits



to be made available free of cost on the certificate of the police officer not below the rank of the officer incharge of the police station or a Magistrate of the area concerned, or any other interim relief as the appropriate authority deems fit.”

21. It is apparent that Sub-Section 3 empowers the trial court upon conclusion of the trial, in case it is satisfied that the compensation awarded under Section 357 is not adequate for such rehabilitation or where the case end in acquittal or discharge and the victim has to be rehabilitated, it may make recommendation for compensation. Sub-Section 3 of Section 357A envisages following situations for recommending for payment of compensation:-

- (i) When the trial court is satisfied that the compensation awarded under Section 357 is not adequate for such rehabilitation.
- (ii) When the case ends in acquittal or discharge and the victim has to be rehabilitated.

22. In the present case, the first part will have no application as the sentence of imprisonment and fine awarded by the trial court has been set aside by the present order. The question arises now as to whether in the facts and circumstances of the given case, the victim, within the meaning of Section 2(wa) of the CrPC



is required to be rehabilitated under the scheme framed by the State Government in terms of Section 357A (1) of the CrPC.

23. In the facts and circumstances of the case, we require the trial court to make a summary enquiry as regards the persons who may be termed as victim(s) within the meaning of Section 2(wa) of the CrPC for the purpose of application of Section 357A in the present case and make recommendation to the District Legal Services Authority, Siwan for due payment of compensation as per the scheme.

(Chakradhari Sharan Singh, J)

(Jitendra Kumar, J)

Nishant/Suraj-

AFR/NAFR	NAFR
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