

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.1122 of 2018**

Arising Out of PS. Case No.-124 Year-2013 Thana- PIRPAINTI District- Bhagalpur

Shankar Mandal S/o Late Khikhar Mandal, R/o Vill.- Bakharpur Pashchimi
Pirpanti Ward No. 12, P.S.- Pirpanti, District- Bhagalpur.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Vijay Anand, Adv

For the Respondent/s : Mr. Abhimanyu Sharma, APP

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

and

HONOURABLE MR. JUSTICE NAWNEET KUMAR

PANDEY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

Date : 26-09-2023

The appellant has preferred this appeal under Section 374(2) of the Code of Criminal Procedure assailing the judgment of conviction dated 21.07.2018 and an order of sentence dated 24.07.2018 passed by the learned 3rd Additional



District & Sessions Judge Bhagalpur in Sessions Trial No. 249 of 2016 arising out of Pirpainti P.S. Case No. 124 of 2013, whereby and whereunder the appellant has been convicted and sentenced as under :-

Penal Provision	Sentence		
	Imprisonment	Fine (Rs.)	In default of fine
Section 302/34 of the IPC	Rigorous imprisonment for life	Rs. 5000/-	R.I for three months
Section 27 of the Arms Act	Rigorous imprisonment for 7 years	Rs.3000/-	R.I for three months

2. A written report of the informant Subhash Kumar Mandal (PW-7) dated 02.09.2013, addressed to the Station House Officer, Pirpainti P.S is the basis for registration of the concerned Pirpainti P.S. Case No. 124 of 2013, disclosing commission of offence punishable under Section 302 of the Indian Penal Code and section 27 of the Arms Act. The FIR was registered at 4:30 pm on 02.09.2013 based on the information received at the police station at 4:30 pm on the said date. The place of occurrence was at a distance of 15 Kms from the police station. The case, as narrated by the informant in his written report is that the informant was studying in his house when at about 10:30 pm he heard sounds of firing and as soon as he



came out, he noticed Mantu Mandal (husband of the deceased), Jichchu Mandal, this appellant, Ranjan Singh and Dayanand Yadav fleeing away after having killed the informant's sister Sabita Devi. This appellant is the brother-in-law (*sala*) of the husband of the deceased. The occurrence, according to him, was seen by his mother Urmila Devi (PW-8) and his nephew (son of the deceased) Ravi Kumar Mandal (not examined). The deceased had sustained injuries in her parietal area and abdomen. He alleged that the relationship of Mantu Mandal with the deceased had broken down and they lived, separately, though adjacent to each other. Because of some property disputes, the accused persons had shot the deceased dead.

3. The police, initially submitted chargesheet against Mantu Mandal for commission of the offence punishable under Section 302 read with Section 34 of the Indian Penal Code and section 27 of the Arms Act, keeping the investigation pending against others. Cognizance was, accordingly, taken and charge was framed against him only, by the trial court on 24.07.2014 for commission of the offence punishable under Section 302 of the Indian Penal Code and Section 27 of the Arms Act giving rise to Sessions Trial No. 540 of 2014. Subsequently, on 30.07.2015 chargesheet was submitted against this appellant for



the offence punishable under section 302/34 of the Indian Penal Code and section 27 of the Arms Act, keeping investigation pending against rest of the persons named in the FIR. Thereafter cognizance of the offence was taken and charge was framed against this appellant for the offence punishable under Section 302 read with section 34 of the Indian Penal Code and section 27 of the Arms Act, giving rise to Sessions Trial No. 249 of 2016. Thus, the aforementioned Pirpainti P.S. Case No. 124 of 2013 gave rise to two separate trials; one against the present appellant and other against co-accused Mantu Mandal. Whereas Mantu Mandal has been convicted and sentenced by the judgment and order dated 22.11.2017 and 27.11.2017 in Sessions Trial No. 540 of 2014 which are under challenge in Criminal Appeal (DB) No. 128 of 2018, this appellant came to be convicted and sentenced by the judgment and order dated 21.07.2018 and 24.07.2018 passed by the learned trial court in Sessions Trial No. 249 of 2016, as has been noted hereinabove, against which the present appeal has been preferred.

4. As both the appeals arose out of the same criminal case they came to be listed together. Separate arguments were advanced in both the appeals by the learned counsel for the parties. The said Criminal Appeal (DB) No. 128 of 2018 has



been disposed of by separate judgment delivered today.

5. In the present trial, the prosecution examined altogether nine witnesses to bring home, the charge against the appellant which included the informant Subhash Kumar Mandal (PW-7) i.e the brother of the deceased, Urmila Devi (PW-8) the mother of the deceased and Ramchandra Mandal (PW-6) brother-in-law (*bahnoi*) of the deceased. The doctor, who had conducted the *postmortem* examination came to be examined as PW-9 whereas the I.O., as PW-5. Four other prosecution's witnesses, namely, Butai Rajak (PW-1), Chunchun Mandal (PW-2), Devnath Mandal (PW-3) and Panchanan Yadav (PW-4) did not support the prosecution's case and came to be declared hostile, at the instance of the prosecution. A carbon copy of the *postmortem* report was the only documentary evidence, which was brought on record by way of Exhibit-1 by the prosecution.

6. On perusal of the deposition of the prosecution's witnesses 1, 2, 3 and 4, who have been declared hostile, we notice that nothing emerges from their evidence to support the prosecution's case in any manner whatsoever. The prosecution's case in the present trial is based on the evidence of the witnesses namely Ramchandra Mandal (PW-6), Subash Kumar Mandal (PW-7) and Urmila Devi (PW-8).



7. It is significant to note at this juncture that the son of the deceased, who according to the prosecution's case, had also seen the accused persons fleeing away after shooting the deceased, was not examined at the trial. It is evident further from the depositions of the witnesses that the husband of the deceased Mantu Mandal, this appellant and the informant are the co-villagers. The deceased also belonged to the same village and had married her co-villager Mantu Mandal, who was already married. PW-8 in her deposition has claimed to be the eye-witness as she was accompanying the deceased at the time of occurrence. According to her, they had gone to ease themselves outside the house. It is her specific deposition that three shots were fired at the deceased, first of which was fired by co-accused Mantu Mandal thereafter this appellant and co-accused Jichchu Mandal fired two shots. She also deposed that the deceased sustained two gun shot injuries in her head and one such injury in her abdomen. She further deposed in her examination-in-chief itself that she has poor vision in the night. She did not disclose in her deposition the source of identification, in the dark night. PW-7, the brother of the deceased in his examination-in-chief deposed that the deceased had sustained three fire arm injuries, two in her head and one in



abdominal area. From his deposition, according to him, the first wife of co-accused Mantu Mandal with her son/daughter were there in the house. The brother-in-law of the deceased Ramchandra Mandal (PW-4) deposed that after he heard gunshot firing he came out of the house and saw co-accused Mantu Mandal shooting at the deceased and in the meanwhile, this appellant also shot at her. The depositions of PWs 7 and 8 do not appear to be reliable as both of them have testified that in their presence, the deceased had sustained three fire-arm injuries whereas the *postmortem* report suggest following injuries proved by the doctor (PW 9):-

“1. one wound of entry with inverted and blackened margin of size $\frac{1}{2}$ ” x $\frac{1}{2}$ ” on left temporal scalp of skull. Projectile found to enter cranium piercing brain, came out through and exit wound with inverted margin of size 1"x1" situated over right parietal and occipetal junction of skull.

2. one wound of entry with inverted and burnt margin of size $\frac{1}{2}$ ” x $\frac{1}{2}$ ” situated over right side abdomen in front at the level of umbilicus 2" lateral to midline, projectile found to piercing abdominal cavity. loops of intestine and came out-through wound of exit with inverted margin of size 1"x1" at right lumbar area of back. There was blood and blood clot found in cranium and abdominal cavity.”



8. In nutshell, the prosecution's case that after having heard the sounds of firing the PWs 6 and 7 had come out of the house and seen the victim being shot at by the appellant and other co-accused persons appears to be doubtful. The occurrence is said to have been taken place in the night at 10:30 pm. The prosecution failed to establish any source of identification. The circumstance in which Urmila Devi was co-incidentally accompanying the victim at the time of occurrence and she having identified the accused persons does not appears to be reliable.

9. The prosecution, in the present trial has not proved even the FIR and except a photostat copy of the *postmortem* report, no other documentary evidence has been brought on record. Non-examination of the son of the victim namely Ravi Kumar Mandal, in the court's opinion is also fatal to the prosecution's case.

10. Accordingly, we do not consider it safe to uphold the conclusion recorded by the trial court.

11. The impugned judgment of conviction dated 21.07.2018 and order of sentence dated 24.07.2018 passed by the learned 3rd Additional District & Sessions Judge Bhagalpur in Sessions Trial No. 249 of 2016 arising out of Pirpanti P.S.



Case No. 124 of 2013, are hereby set aside.

12. This appeal is allowed.

13. Since the appellant is in custody, let him be released from jail forthwith, if not required in any other case.

(Chakradhari Sharan Singh, J)

(Nawneet Kumar Pandey, J)

ranjan/nirmal-

AFR/NAFR	NAFR
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