

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.712 of 2016

Arising Out of PS. Case No.-61 Year-1989 Thana- NAYA RAM NAGAR District- Munger

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Mani Mandal, Son of Karan Singh, Resident of Naya Tola Patam, P.S. - Naya
Ram Nagar, District-Munger

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Suresh Prasad Singh, Advocate

Mr. Subodh Kumar, Advocate

For the Respondent/s : Mr. Dilip Kumar Sinha, APP

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
and
HONOURABLE MR. JUSTICE NANI TAGIA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 08-01-2024

1. We have heard Mr. Suresh Prasad
Singh assisted by Mr. Subodh Kumar, the learned
Advocates for the appellant and Mr. Dilip Kumar Sinha,
the learned APP.

2. The sole appellant has been held guilty
for the offence under Sections 302/34 of the Indian



Penal Code *vide* judgment dated 27.05.2016, passed by the learned Sessions Judge, Munger in connection with Sessions Trial No. 529 of 1990, arising out of Naya Ram Nagar P.S. Case No. 61 of 1989. By order dated 31.05.2016, he has been sentenced to undergo imprisonment for life, to pay a fine of Rs. 10,000/- and in default of payment of fine, to further suffer imprisonment for three months.

3. Though many persons were made accused in this case but the appellant only survived to face the Trial.

4. The Trial Court after having examined 11 witnesses on behalf of the prosecution, convicted and sentenced the appellant as aforesaid.

5. The FIR was lodged by Bharat Mandal, brother of the deceased (Chandar Mandal), on 26.08.1989 alleging that in the night intervening between 25th and 26th of August, 1989 he and Amrendra Kumar Mandal (P.W. 1), Raj Kumar Mandal



(P.W. 4) and Abhimanyu Prasad Singh @ Manu (P.W. 9) were talking on the roof-top and waiting for his brother/deceased to come. He was scheduled to come from a work place where he worked in the night shift. Early in the morning, after one train had stopped at the rail-road crossing somewhere near the house of the informant (P.W. 5), he heard a sound of firing. Since he knew about his brother's programme of coming back home by the same train and he was also aware that his brother had enmity with people in the village, he suspected some mishap.

6. He along with others including P.Ws. 1, 4 and 9, referred to above, came out of his house only to find from a distance that two of the accused persons had caught the deceased while the appellant and another fired from their weapons, killing him. Later, the accused persons left the P.O. while firing in order to safely effect their escape.

7. After about few hours, P.W. 5 is said to



have gone to the police station to report about the occurrence.

8. Hence the FIR.

9. The dead body was put to post-mortem examination when the Doctor/P.W. 9 (Dr. K.K. Bajpaiyee) found the body ridden with three wounds of entry. The deceased had died of gun-shots.

10. The Trial Court appears to have solely relied upon the deposition of Bharat Mandal (P.W. 5) and Meena Devi (P.W. 7) to record the finding of guilt against the appellant.

11. We have found from the deposition of P.W. 5 that it is not worthy of complete reliance. We say so for the reason that his version at the Trial has not been supported by Amrendra Kumar Mandal and Raj Kumar Mandal, who were present at the time of occurrence and had accompanied Bharat Mandal to the place from where they saw the deceased being shot at.

12. Both the afore-noted witnesses, viz.,



Amrendra Kumar Mandal and Raj Kumar Mandal, though have confirmed the story of the deceased having been shot at in the early hours of 26.08.1989, but did not claim to identify anybody as the marauders. In fact, Raj Kumar Mandal (P.W. 4) was a guest in the house of Bharat Mandal and was related to him and the deceased, both, in a direct way.

13. Had he seen any one of the assailants, he would not have backed out in not naming them before the Trial Court.

14. It thus appears that Bharat Mandal, only in order to avenge the earlier enmity with the appellant, has named him as one of the assailants of the deceased.

15. The wife of the deceased, viz., Meena Devi though claims to have seen the occurrence but her deposition does not inspire confidence for the reason that there is no reference in the FIR made by Bharat Mandal that she had also accompanied the



informant/P.W. 5, P.W. 1 and P.W. 9 to the place from where they spotted the deceased being shot dead.

16. Rest all other witnesses except P.W. 9 have been tendered at the Trial.

17. The FIR is sought to be proved by Raj Kumar Singh (P.W. 11), who is the Advocate's clerk.

18. It appears from the records that the case remained pending before the Trial Court for nearly three decades. The cognizance in the case was taken on 08.02.1990 and was committed to the Court of Sessions on 10.08.1990.

19. It further appears that charges were framed in this case on 13.05.1992. By that time, one Bijay Tanti, one of the accused persons of this case was reported to have died and, therefore, the proceedings against him had to be dropped. The case of another accused, viz., Ambika Mandal was separated in the year 2007.

20. The appellant had been on bail during



the Trial but because of his jumping the bail bonds, his bail was cancelled on 28.01.2016. He was taken in custody on 30.03.2016 and since then, he is in jail.

21. A bare look at the deposition of P.W. 5 would make it very clear that there are inconsistencies galore in his deposition. There was no reason for the accused persons to have waited for others to arrive when they had already executed the murder. Admittedly, P.W. 5 had gotten up and had come in search of his brother after he had heard the sound of firing.

22. With the non-examination of the I.O., we are also not sure whether there was any means of identification of the accused persons by the appellant and that too from a distance.

23. No explanation also has been offered by the prosecution for the non-examination of the I.O.

24. Many persons, according to P.W. 5, would have got down the train at the rail-road crossing.



The number has been stated to be approximately 250 to 300. The deceased then would not have been killed in presence of all the travellers.

25. When did the murder took place and by whom, therefore, remains absolutely ambiguous.

26. One of the prosecution witnesses, who has been tendered is non-else but a person, who resides only 15 yards away from the touted P.O., viz., the school compound where the deceased was dragged and then shot dead.

27. As noted above, we have also found the deposition of the wife of the deceased (P.W. 7) to be doubtful for the reason of there being no evidence on record of her having made such statement before the police during the course of investigation. Otherwise also, if the deposition of P.W. 5 is to be believed, she had not accompanied him and others to the P.O.

28. Had she done so, P.W. 5 would have said that in the FIR.



29. We do reckon that not all the details are expected to be provided in the FIR, but the presence of the wife of the deceased along with the informant of this case is an important fact providing sufficient materials to the case, which if not stated in the FIR, raises eyebrows.

30. The post-mortem examination appears to have been conducted at five past one o'clock in the afternoon of 28.08.1989. The time of death was fixed at within 32 hours of the occurrence. If the prosecution case is to be believed, the occurrence took place sometimes after 04:30 in the morning of 28.08.1989.

31. The P.M. report, therefore, definitely presumes that the death had taken place much earlier than what has been reported by P.W. 5.

32. There is a categorical observation in the report that *rigor mortis* was present all over the body. Thus, the reason for the Doctor having given such a wide berth for the time of death, remains inexplicable



to us.

33. Thus, for all practical purposes, the conviction appears to have been recorded only on the solitary evidence of the brother of the deceased, viz., Bharat Mandal/P.W. 5, whose version is not free from infirmities. That he proceeded to look for his brother, unarmed and without any preparation, also appears peculiar to us especially when P.W. 5 had heard the sound of firing; knew about the programme of the deceased as also that the deceased had enmity in the village.

34. Apart from all this, what is noticeable in his deposition is that he did not offer any evidence of his having seen the occurrence in the torch light. He had not given the torch to the Investigator. No person of the village, according to him, came for the rescue of the deceased.

35. It appears that there is a possibility that because of land dispute, the sole surviving appellant



has been named as one of the accused persons.

36. For the materials being so exiguous, it is difficult for us to sustain the conviction of the appellant.

37. Giving him benefit of doubt, we set aside the judgment and order of conviction of the appellant and acquit him of the charge levelled against him.

38. The appeal stands allowed.

39. It is informed by the learned Advocate that the appellant is in jail since 2016. He is directed to be released forthwith from jail, if not detained or wanted in any other case.

40. Let a copy of this judgment be dispatched to the Superintendent of the concerned Jail forthwith for compliance and record.

41. The records of this case be returned to the Trial Court forthwith.

42. Interlocutory application/s, if any, also



stand disposed off accordingly.

(Ashutosh Kumar, J)

(Nani Tagia, J)

Sauravkrsinha/
Krishna-

AFR/NAFR	NAFR
CAV DATE	NA
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