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Cr1.A.No. 63-64 OF 2001
L.....T.....T.....T.....T.....T.....T.....T.....T.....T.....R
ITEM NO.103 COURT NO.06 SECTION II

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

CRIMINAL APPEAL NOS.63-64 OF 2001@@
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MULHA YADAV & ANR. ... APPELLANT(S)

VERSUS

STATE OF BIHAR ... RESPONDENT(S)

(With appln.(s) for exemption from filing O.T. and with Office Report)

Date: 04/09/2002. This/These matter(s) were called on for hearing today.@@
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CORAM:

HON'BLE MR. JUSTICE U.C. BANERJEE
HON'BLE MR. JUSTICE ASHOK BHAN

For Appellant (s) Mr. Shiv Kumar Suri, Adv.

For Respondent(s) Mr. Saket Singh, Adv. for
Mr. B.B. Singh, Adv.

UPON hearing counsel the Court made the following
O R D E R

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.SP2

Heard learned counsel for the parties for about half an hour.

The appeals are dismissed in terms of the signed order.

.SP1

(K.K. Chawla) (Shelly Sengupta)@@
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Court Master Court Master

[Signed order is placed on the file]

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IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NOS.63-64 OF 2001@@
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VERSUS

STATE OF BIHAR

RESPONDENT

O R D E R@@
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.SP2

These two appeals are directed against the common judgment of the High Court of Patna wherein the appellants have been convicted under Section 302 of the Indian Penal Code and sentenced to undergo imprisonment for life. They have also been convicted under Section 27 of the Arms Act but no separate sentence was awarded. Incidentally, be it noted that along with the appellants herein four other accused persons were tried for the offences under Section 302/149 of the Indian Penal Code but they have been dropped out on the ground of benefit of doubt.

The case of the prosecution, in brief, is that on 25.09.1991 at about 04.30 P.M. when the ..2/-

-2-

informant, P.W.1, Chunchun Singh, his wife, P.W.2, Sushila Devi, and his son, PW.3, Sanjay Singh, came from Bhagalpur, they heard a rumour that a young boy was killed in the market. All the three persons arrived at the place of occurrence and found the son of the informant, namely, Vijay Kumar, lying injured. It is further stated no sooner the informant arrived there his son asked for water and, thereafter, also disclosed the names of these appellants and four others as his assailants. He had also stated specifically that these two appellants had fired at him. After giving such information to the informant, Vijay Kumar became senseless and immediately, thereafter, died. Police, on getting the information about the occurrence, arrived at the place of occurrence where the 'fardbeyan' of the informant was recorded by PW.8, Rameshwar Prasad, the Officer-in-Charge. He also prepared the inquest report and also observed other formalities regarding seizure of relevant materials available there. Thereafter, the dead body was sent for ..3/-

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post mortem. The investigating officer also examined the witnesses and having found a prima facie case submitted chargesheet whereupon the Chief Judicial Magistrate took cognizance of the offence and committed the case to the court of sessions, calling upon the accused persons to face

trial.

The nature of the injuries are rather gruesome but in order to appreciate the contentions raised one needs to have a glance through the same and as such the same are set out hereinbelow:-

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"(I) Incised wound 2(2/1)" x 1" x bone deep on right eye brow and eye cavity. Eye ball was found remove.

(II) Incised wound 1(1/4)" x 1/2" cutting part of right ear loball.

(III) Fire arm wound of entry one C.M. in diameter inter margin inverted with colour of abrasion, 1" below land medial to the left nipple or chest.

(IV) Wound on exit on back of left side 1(1/2) C.M. in diameter margin inverted 2" left of mid spinal line below angle of scapula; interior angle.

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Both aforesaid sounds were found communicating. Prejectile trandised through wound of entry to chest wall, left lung fracturing fifth rib posteriorly land out through wound of exit.

(V) Incised wound on right shoulder 1'L" x 1/2" x bone deep cutting a portion of acromial process.

(VI) Lacerated wound 1" x 1/2" x scalp deep on right parietal region."

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In the opinion of the Doctor, the injuries found on the person of the deceased were sufficient in the ordinary course of events to cause death and it is on this score the learned Amicus Curiae appearing in support of the appeal with all the emphasis under his command submitted that oral evidence stands contradicted by the medical evidence inasmuch as two injuries ought to have taken place on the body of the deceased. The medical report contain only one shot. We are, however, unable to record our concurrence therewith since the same is too insignificant a piece of contradiction to get an order of acquittal under Section 302 of the Indian Penal Code.

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The other aspect of the matter dealt with by the learned Amicus Curiae is the absence of the independent witnesses. The High Court dealt with the issue in a manner below:.

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"In such a situation simply because the shop keepers and other persons were not examined, it is not proper to doubt the credibility of the evidence of PWs. 1 and 2, unless and until something positive is brought before the Court to suggest that these witnesses have falsely implicated the appellants. "

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.SP2

The High Court while dealing with the matter thought it prudent to record that no suggestion whatsoever was given to the PWs 1 and 2 by the defence regarding the contradiction of the injuries which the doctor had found nor under what circumstances the witnesses have falsely implicated them and it is on this score the High Court recorded a finding that there cannot be any justification to doubt the case of the prosecution. We also on perusal of the records do find in the same vein and non-examination of
..6/-

indepedent witnesses cannot, by any stretch, be termed to be fatal for the prosecution. There should be proper and acceptable evidence on record and in the event the Court is satisfied to that effect, then and in that event failure to examine independent witnesses cannot be fatal and as such we are not inclined to intervene or interfere. In any event, since the appeals involve concurrent findings of fact, the question of interference of this Court under Article 136 of the Constitution in the absence of perversity resulting into manifest injustice would not arise.

These appeals, therefore, stand dismissed.

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.....J.
(U.C. Banerjee)

.....J.
(Ashok Bhan)

New Delhi,
September 04, 2002.