

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.172 of 1993

Arising Out of PS.Case No. -21 Year- 1991 Thana -HARPUR District- MUNGER

Harihar Singh, son of Saryug Prasad Singh, resident of Village Kalay, P.S. Harpur,
District Munger

.... Appellant

Versus

The State of Bihar

.... Respondent

Appearance :

For the Appellant : Mr. Arvind Kr. Singh, Advocate

For the State : Mr. A.K. Sinha, APP

CORAM: HONOURABLE MR. JUSTICE V.N. SINHA

and

HONOURABLE MR. JUSTICE JITENDRA MOHAN SHARMA

C.A.V. JUDGMENT

(Per: HONOURABLE MR. JUSTICE V.N. SINHA)

Date: 14-09-2015

Informant is the appellant herein. He has filed this appeal assailing the judgment/ order dated 12.02.1993, passed by 2nd Additional District and Sessions Judge, Munger, in Sessions Trial No. 129 of 1992 whereunder he has been convicted under Section 302 of the Penal Code for committing murder of his mother Radha Devi and brother Ranjeet Prasad Singh in his house in the night of 19.10.1991 and sentenced to suffer rigorous imprisonment for life.

2. Prosecution case, as set out in the *fardbeyan* of the informant recorded by S.I. B.N. Pandey, Officer-in-Charge Harpur Police Station on 20.10.1991 at 8.15 A.M. in village Kaliee, is that in the previous night after taking dinner informant, his brother Ranjeet Prasad Singh spoke to their mother Radha Devi and as per

her instruction informant went inside the room to sleep, mother and brother of informant slept on a cot in the northern side of verandah facing south. All of a sudden informant woke up between 10.30-10.45 P.M. hearing rumbling/ knocking sound coming from the court-yard, opened the door of his room slowly to see 10-12 armed men standing in the court-yard looking towards the door. The armed men wanted to kill the informant but he swiftly closed the door and raised alarm calling his neighbour Dhananjay Singh @ Baudu Singh, S/o Deoki Singh, whose house is situate behind his house. Dhananjay, who responded once but became silent thereafter. Informant thereafter called Sudama Singh, who climbed over his roof and wanted to say something. It is further stated in the *fardbeyan* that when informant was raising alarm miscreants were standing in the court-yard/ verandah and stated that they have killed his mother, brother and now it is informant's turn. The miscreants were also abusing others. In the moon light and by voice informant identified co-villagers Ratneshwar Singh S/o Kamta Prasad Singh, Jagdish Prasad Singh S/o Singheshwar Prasad Singh, Jai Prakash Rai S/o Govind Rai, Ambika Sharma S/o Chaturi Sharma, Bhikhari Paswan S/o Borhan Paswan, Jai Prakash Singh @ Bhushan S/o Brahmdeo Singh and Pahalwan Singh @ Onkar Singh S/o Jagdish Singh amongst the miscreants armed with pistol, gun, *bhujali*, *farsa* etc. Informant further stated in the *fardbeyan* that he is not on inimical



terms with any of the villagers except Ambika Sharma, S/o Chaturi Sharma with whom he has land dispute from last Sawan and a proceeding under Section 107 Cr.P.C. is pending in the court of Sub-Divisional Magistrate. One week prior to the occurrence co-villagers of the informant Ratneshwar Singh, Jagdish Singh, Chotelal Singh and Jai Prakash Singh came to his house, asked him not to quarrel with Ambika Sharma and they would ensure that the price of land is paid to him for which informant agreed. It is further stated in the *fardbeyan* that the aforesaid co-villagers before leaving the house of the informant threatened him that if he did not accept the price of the land he may be in trouble. Informant further stated that the aforesaid miscreants did not ensure payment of land price to him even after passage of Dashahra festival and killed his mother, brother in the previous night. It is further stated in the *fardbeyan* that on account of fear of the accused persons none of the villagers came to his house to enquire about the occurrence. After departure of the miscreants informant came out of his room, saw his brother Ranjeet Prasad Singh dead and mother making rumbling sound from her vocal-cord. Informant enquired from his mother about the identity of the assailants by furnishing the name of the aforesaid accused persons, on which his mother shook her head and succumbed to the injuries. Informant also claimed in the *fardbeyan* that the aforesaid accused persons named in the *fardbeyan* are the assailants of his mother,



brother. S.I. B.N. Pandey, Officer-in-Charge, Harpur Police Station having scribed the *fardbeyan* prepared inquest report of the two deceased on the same day at 8.45, 9.00 A.M. vide Exhibits-4, 4/1 respectively and handed over the two dead bodies to M/s Banarsi Paswan and Mahendra Paswan (P.Ws. 4, 5) for taking the dead bodies to Munger Sadar Hospital for post mortem. After dispatch of the dead bodies Investigating Officer proceeded to inspect the place of occurrence house and made seizure of the incriminating articles, namely, blood stained old cotton sheet, quilt, blood soaked soil, *gul* container with blood stains from the house of the informant vide seizure-list dated 20.10.1990 prepared at 11.00 A.M. (Exhibit-6). After completing preliminary investigation at the place of occurrence Investigating Officer, the scribe of the *fardbeyan*, returned to the police station and registered First Information Report of Harpur P.S. Case No. 21 dated 20.10.1991 under Sections 302/120-B/34 of the Penal Code stating that he has already taken up investigation of the case. The formal First Information Report was dispatched to the court on 20.10.1991, which was perused by the Chief Judicial Magistrate on 21.10.1991. Distance between the place of occurrence and the dead house being 70 kilometers the two dead bodies were received in the dead house on 21.10.1991 at 9.30 A.M. and post mortem conducted on the same day at 10.00, 10.30 A.M. respectively. From the post mortem report, it appears that both mother and the son were



done to death by inflicting injuries from sharp cutting weapon and time elapsed since death being 36-48 hours. During investigation Investigating Officer recorded the statement of the neighbours of the informant named in the *fardbeyan* whom he called while raising alarm as also of others, concluded that the two murders were committed by none-else other than the informant himself and submitted charge-sheet against him exonerating those named in the *fardbeyan*. In the light of the charge-sheet cognizance was taken and informant was summoned to face trial. After supply of police papers to the accused person case was committed to the Court of Sessions. Sessions Court framed charge against the informant under order dated 19.05.1992 to which he pleaded not guilty and claimed to be tried.

3. In support of the charge prosecution examined as many as 14 witnesses, namely, P.Ws. 1, 3 Dhananjay Prasad Singh, Sudama Prasad Singh, the two neighbours who were called by the informant while he raised alarm from his room in the night of occurrence. P.W. 2 Badal Devi is also co-villager, relative and neighbour of the informant as her house is 25 ft. away from the house of the informant. In Paragraph 10 of her evidence P.W. 2 stated that in the evening of occurrence around 7.00 P.M. Radha Devi, mother of the informant had come to her house to take water from the hand pump like any other day and when the witness asked her to sit for



sometime and made enquiry whether she had cooked her meal for the evening then Radha Devi expressed apprehension about her life from her son and answered the query in negative. P.W. 4 Banarsi Paswan is the Chowkidar who informed the Officer-in-Charge, Harpur Police Station about the incident. P.W. 5 Mahendra Paswan is also Chowkidar, who came to the place of occurrence after the occurrence. P.W. 6 Mina Devi is the wife of Raushan Singh, elder brother of the informant and at the time of occurrence was present in the place of occurrence house sleeping in the room along with her two children. She woke up hearing the scream of her mother-in-law and almost at the same time realised that she is being assaulted with fist making her scream in the name of her father, mother and further saying something which P.W. 6 did not remember. In Paragraph 14 of her evidence P.W. 6 further stated that her father-in-law had sold lands to one Ambika Sharma for meeting out the expenses of his treatment and for the same land there was scuffle between the informant and Ambika Sharma as also case lodged. Brother of the informant, deceased Ranjeet also supported the informant in his fight with Ambika Sharma. In the same paragraph P.W. 6 further stated that 2-4 days prior to the occurrence informant had asked his mother to sell her 10 kathas of land and pay the sale proceeds to him so that he may contest the litigation, which was opposed by his deceased mother. In the same paragraph P.W. 6 further stated that deceased



Ranjeet had also supported his mother in her pursuit not to sell the lands as per the wish of the informant. P.W. 7 Chotani Singh is also neighbour of the informant and has been named by him in the *fardbeyan* as one of the accused responsible for the twin murder. In Paragraph 3 of his evidence P.W. 7 stated that in the morning of occurrence around 4.00 A.M. he went to Rannuchak wherefrom he returned after two days of the occurrence and could not record his police statement about the occurrence. P.W. 8 Suresh Prasad Singh is also a neighbour of the informant. P.Ws. 9, 10 Dr. Arjun Prasad, Sudhir Kumar are the two doctors who conducted post mortem over the dead body of Ranjeet Singh and Radha Devi on 21.10.1991 vide Exhibits-1, 2 respectively. P.W. 11 Pawan Kumar Singh is a seizure witness. P.W. 12 Uday Kant Pathak is a witness of inquest. P.W. 13 Subodh Prasad Singh has been tendered for cross-examination. P.W. 14 Bisheshwar Nath Pandey, Officer-in-Charge, Harpur Police Station is the scribe, Investigating Officer of the case. He referred to the inspection of place of occurrence made by him in Paragraph 12 of his evidence and stated that the court-yard where the two dead bodies were found had no door and anyone could trespass therein.

4. Learned counsel for the appellant submitted that none of the prosecution witnesses, namely, P.Ws. 1, 3 the two neighbours whom informant called while raising alarm in the night of occurrence or any other co-villager/ neighbour examined during trial



has supported the prosecution story, as found true during investigation that it was the informant who committed the twin murders of his mother, brother in the court-yard of his house during the night of 19.10.1991, has not been proved beyond reasonable doubt as the witnesses examined have neither seen the informant committing the twin murder nor there is any material to connect him with the incriminating articles seized from his court-yard in the morning of occurrence i.e. blood stained cotton sheet, quilt, blood soaked earth vide seizure-list (Exhibit-6). There is no material at all collected during investigation and proved during trial on the basis of which informant can be held to be responsible for the twin murders of his mother, brother. It is further submitted that it is the duty of the prosecution to prove the charge beyond all reasonable doubt, but in the instant case, prosecution witnesses including the Investigating Officer of the case have miserably failed to discharge the onus of proving the guilt of the informant beyond all reasonable doubt. In support of the aforesaid contention, learned counsel for the appellant has placed reliance on the judgment of the Supreme Court in the case of *Shambhu Nath Mehra v. The State of Ajmer AIR 1956 Supreme Court 404*, *Mohd. Usman v. The State of Bihar AIR 1968 Supreme Court 1273*, *Sawal Das v. State of Bihar AIR 1974 Supreme Court 778 Paragraphs 9, 10*, *State of W.B. v. Mir Mohammad Omar and others (2000) 8 Supreme Court Cases 382, Paragraphs 37, 39*,

Murlidhar & Ors. v. State of Rajasthan 2005(3) PLJR 161 (SC)
Paragraphs 21, 22 and P. Mani v. State of Tamil Nadu 2006(2)
PLJR 213(SC).

5. Learned counsel for the appellant also referred to the evidence of P.W. 3 in Paragraph 23 and submitted that in presence of P.W. 3 informant asked his mother as to who assaulted her and such fact P.W. 3 had reported to the police, which would appear from Paragraph 23 of his evidence and in the background of such statement learned counsel for the appellant submitted that had the informant been the assailant of his mother he may not have put such question to her.

6. Learned counsel for the appellant further submitted that Onkar Singh, son of Jagdish Singh, nephew of P.W. 3 has been named by the informant as an accused in his *fardbeyan*, as such, it may not be safe to rely on the evidence of P.W. 3.

7. Learned counsel for the appellant further submitted that the prosecution has not been able to establish the motive behind the occurrence and as motive has not been proved, the weapon used to assault the two deceased has not been traced by the Investigating Officer, it may not be prudent to maintain the conviction of the son, brother of the two deceased.

8. Learned counsel for the State, however, supported the impugned judgment, order passed by the court below



and submitted that the murder of Radha Devi, Ranjeet Prasad Singh was committed in the house of the informant while they were sleeping on the cot in the court-yard of the house in the night of 19.10.1991. Informant recorded the *fardbeyan* about the occurrence in the morning stating that his mother, brother have been killed by the miscreants and while the miscreants were in the court-yard he raised alarm calling out the names of Dhananjay Prasad Singh and Sudama Prasad Singh, the two neighbours of the informant and both were examined during trial as P.Ws. 1, 3 in order to support the prosecution case. Perusal of the evidence of P.W. 1 clearly indicates that on alarm being raised in the night of occurrence by the informant asking P.W. 1 to come running to his house as dacoits have arrived in his house, P.W. 1 came out of his house with torch and saw in the torch, moon light that the miscreants were not to be seen anywhere in the vicinity. P.W. 1 having not seen the miscreants came to the court-yard along with P.W. 3. Earlier hearing the alarm raised by the informant P.W. 3, another neighbour of the informant also came out of his room with torch, went to the roof of his house, flashed torch light in the court-yard of the informant but could not see any miscreant. P.W. 3 thereafter flashed torch light in the lane in both north, south direction where there was no habitation but could not see any miscreant in the lane also. P.W. 3, however, saw P.W. 1 flashing torch light from the lane in front of his house and loudly asked the

informant that he was perhaps dreaming about the presence of dacoits in his house/ lane. P.W. 3 thereafter came out of his house in the lane and went to the court-yard of the informant together with P.W. 1.

9. Learned counsel for the State also referred to the evidence of P.W. 6 Mina Devi, the sister-in-law of the informant, who, at the time of occurrence, was present in the house sleeping in the room along with her two children. She woke up hearing the scream of her mother-in-law and almost at the same time realised that she is being assaulted with fist making her scream in the name of her father, mother and further saying something which P.W. 6 did not remember, as would appear from her evidence in Paragraph 4. Aforesaid fact was also stated by her before the Investigating Officer of the case, as would appear from her evidence in Paragraph 20. In Paragraph 5 P.W. 6 stated that almost at the same time the door was closed and informant raised alarm asking her husband to come as dacoits have arrived in his house. P.W. 6, however, did not make any noise because she apprehended trouble at the instance of the miscreants. In Paragraph 6 P.W. 6 stated that after informant raised alarm about the presence of dacoit her neighbour, whom she identified as father of Bebi, loudly rebuffed the informant that he was perhaps dreaming about the presence of dacoit and thereby corroborated the evidence of P.W. 3 that when the informant raised alarm in the night about the presence of dacoit in his court-yard at the



same time P.W. 1 had also come out of his house flashing torch, thereby confirmed that there was no dacoit present and then loudly observed that informant was perhaps dreaming about their presence. In this connection, learned counsel for the State also referred to the evidence of P.W. 6 in Paragraph 11 where she confirmed that informant even refused to take her mother for treatment on the pretext that she will not survive. Learned counsel for the State also referred to the evidence of P.W. 6 in Paragraph 14 where she stated that her father-in-law had sold lands to one Ambika Sharma for meeting out his treatment expenses and for the said land there was scuffle between the informant and Ambika Sharma as also case lodged. Brother of the informant, deceased Ranjeet also supported the informant in his fight with Ambika Sharma. In the same paragraph P.W. 6 further stated that 2-4 days prior to the occurrence informant had asked his mother to sell her 10 kathas of land and pay the proceeds to him so that he may contest the litigation, which was opposed by his mother. In the same paragraph P.W. 6 further stated that the deceased Ranjeet had also supported his mother in her pursuit not to sell the lands. Learned counsel also referred to the evidence of P.W. 7 Chotani Singh where he stated that 2-3 days prior to the occurrence informant quarrelled with his mother as she refused to arrange money for him after selling her land. P.W. 7 tried to pacify the informant but he killed his mother, brother.

10. In view of the rival submissions, we have perused the evidence of the prosecution witnesses i.e. P.Ws. 1, 3, 6, 7 referred to above. None of the aforesaid witnesses are the eye-witness of actual assault by the informant on the person of his mother, brother. From the evidence of P.W. 7 in Paragraph 3 it appears that he did not record any police statement, in the circumstances, it may not be safe to rely on his evidence. We have, however, examined the evidence of P.Ws. 1, 2, 6, 3 and the Investigating Officer (P.W. 14) wherefrom it appears that the occurrence took place in the night of 19.10.1991, *fardebayan* recorded in the morning of 20.10.1991, preliminary investigation undertaken soon after recording of *fardebayan* and inquest on the dead body of two deceased was conducted by the Investigating Officer on 20.10.1991 at 8.45, 9.00 A.M. (Exhibits-4, 4/1). After inquest proceeding both the dead bodies were handed over to M/s Banarsi Paswan and Mahendra Paswan (P.Ws. 4, 5) for taking the dead bodies to Munger Sadar Hospital for post mortem. After dispatch of the dead bodies Investigating Officer proceeded to inspect the place of occurrence house and made seizure of the incriminating articles, namely, blood stained old cotton sheet, quilt, blood soaked soil, *gul* container with blood stains from the house vide seizure-list dated 20.10.1990 prepared at 11.00 A.M. (Exhibit-6). After completing preliminary investigation at the place of occurrence Investigating Officer, the scribe of the *fardebayan*,



returned to the police station and registered First Information Report of the instant case stating that he has already taken up investigation of the case. Distance between the place of occurrence and the dead house being 70 kilometers the two dead bodies were received in the dead house on 21.10.1991 at 9.30 A.M. and post mortem conducted on the same day at 10.30 A.M. On the same day Investigating Officer recorded the statement of P.Ws. 1, 6 i.e. neighbour, sister-in-law of the informant. Both did not approve of the claim of the informant that dacoits came to his house in the night of 19.10.1991 and killed his mother, brother. P.W. 1 further stated that hearing the alarm raised by the informant in the night that dacoits have come to his court-yard P.W. 1 came out of his house and with torch, moon light wanted to resist the dacoits but none of the dacoits was seen either in the court-yard or in the lane. P.W. 1 further stated that at the same time P.W. 3 having heard the alarm climbed his roof, lighted the torch and wanted to resist the dacoits but none of the dacoits was seen by him also. Both P.Ws. 1, 3 also visited the court-yard of the informant soon after he raised alarm about the presence of the dacoits in his court-yard but did not find any of the dacoits either in the court-yard or in the lane or in the vicinity. P.W. 6 stated that after informant raised alarm about the presence of dacoits her neighbour, whom she identified as father of Bebi, loudly rebuffed the informant that he was perhaps dreaming about the presence of dacoits. In the light of the police



statement of P.Ws. 1, 6 Investigating Officer searched for the informant in the village on 21.10.1991 but he was not found. P.W. 3 recorded his police statement on 22.10.1991 disputing the presence of dacoits in the court-yard of the informant/ lane in the night of occurrence and further went on to say that after he heard alarm raised by the informant that dacoits have come to his court-yard he went to his roof top, lighted the torch and rebuffed the informant in the night itself that perhaps he was dreaming about the presence of dacoits in his court-yard.

11. Investigating Officer in the light of the statement of P.Ws. 1, 6, 3 as also his own finding that during the incident no valuable from the house of informant was removed by the miscreants concluded that the story of dacoits visiting the house of the informant is not only untrue but also an attempt by the informant to misdirect the investigation in the case of murder of his mother, brother. He also concluded that it was the informant in whose presence the incident of murder of his mother, brother took place in the court-yard of his house in the night of 19.10.1991 and it was for him to have disclosed the correct information about the manner of occurrence, as it was he who was only privy to the manner in which his mother, brother was killed. Informant has deliberately misled the Investigating Officer by introducing the story of dacoits visiting his house in the night of 19.10.1991, concealed the relevant



facts to which he was only privy to and was required to have disclosed to the Investigating Officer so as to enable him to reach the correct conclusion. Informant falsely introduced the story of dacoits visiting his house to conceal the two murders by him, was searched for in the village on 22, 23.10.1991 but was not found in the village. Investigating Officer being satisfied that informant has not disclosed the correct facts about the manner of incident in which the two murders took place in his court-yard in the night of 19.10.1991 to which he was only privy to, concluded that the informant was doing so only with a view to protect himself of the charge of murder, arrested him and produced in court on 27.10.1991. Later charge-sheet dated 23.01.1992 was received in court on 24.01.1992 citing P.Ws. 1, 2, 3, 6 and 14 others as witnesses in support of prosecution. From the evidence of two autopsy surgeons (P.Ws. 9, 10) it is established that the death of mother, brother of the informant was homicidal in nature and committed almost at the same time in the night of 19.10.1991.

12. From the evidence of P.Ws. 1, 3, 6 it is evident that the story of dacoits visiting the court-yard/ house of the informant in the night of 19.10.1991 was rebuffed by P.W. 3 in the same night when he responding to the alarm raised by the informant, went to his roof to challenge the dacoits with torch light but having seen none of the dacoits in the court-yard/ house of the informant rebuffed the informant in the night itself that he was perhaps



dreaming about their presence, such fact being also confirmed by P.W. 1 and others, there cannot be any difficulty in concluding that the informant not only attempted to mislead his neighbours and P.W. 6 about the presence of dacoits in his house in the night of 19.10.1991 but also did the same thing with the Investigating Officer as well. Informant misled the Investigating Officer by introducing the story about the presence of dacoits in his house in the night of 19.10.1991 by stating such fact in the fardbeyan. Investigating Officer found no incriminating evidence about the presence of dacoits at the place of occurrence house in the night of 19.10.1991. P.Ws. 1, 3 categorically stated in their police statement, evidence that hearing the alarm raised by the informant about the presence of dacoit they woke up, took steps to challenge the dacoits but none of the dacoits was seen by them either in the court-yard/ house of the informant or in the lane or in the vicinity whereafter P.W. 3 also rebuffed the informant in the night itself that he was perhaps dreaming about the presence of dacoits. Evidence of P.Ws. 1, 3 having also been corroborated by P.W. 6, coupled with the conduct of the informant that he disappeared from the village from 21.10.1991 itself until he was arrested and produced in court on 27.10.1991 as also the attempt of the informant to mislead the prosecution party about the manner of assault to which he was only privy to, is indicative of the fact that he is the assailant of his mother,

brother.

13. The motive behind the occurrence is also established in the light of the evidence of P.W. 6 in Paragraph 14 where she has categorically stated that her father-in-law had sold lands in favour of Ambika Sharma to meet his treatment expenses and for the land sold there was dispute between the informant and Ambika Sharma leading to scuffle and filing of case. 2-4 days prior to the occurrence informant asked his mother to sell her 10 kathas of land and to give him the sale proceeds so that he may contest the litigation with Ambika Sharma, which was opposed by his mother and deceased brother Ranjeet supported his mother in her desire not to sell the lands. In this connection, we may also refer to the evidence of P.W. 2 in Paragraph 10 where she has categorically stated that like any other day in the evening of occurrence also the deceased mother of the informant came to her house to take water from the hand pump and when she asked her about her well-being as also whether she has cooked her meal for the evening then the mother of the informant expressed apprehension at the instance of her son and answered the query about cooking meal for the evening in negative. In the light of the aforesaid evidence of P.Ws. 6, 2 we are satisfied that the appellant was aggrieved by the conduct of his mother and the deceased brother as the mother of the informant was not ready to sell her 10 kathas of land and to hand over the sale proceeds to the

informant for contesting the litigation with Ambika Sharma and in such resolve she was being duly supported by her son Ranjeet and thereby informant was aggrieved by the conduct of both her mother and brother Ranjeet and motive for the occurrence is duly proved.

14. The submission of the learned counsel for the appellant that no reliance be placed over the evidence of P.W. 3 as his nephew Onkar Singh, son of Jagdish Singh has been made accused by the informant in the present *fardbeyan* is not at all worthy of credence, as perusal of the *fardbeyan* would itself indicate that the informant on his own had raised alarm in the name of P.W. 1 Dhananjay Prasad Singh, P.W. 3 Sudama Prasad Singh and if he had any enmity with P.W. 3 he ought not to have raised alarm in his name. It appears Onkar Singh, son of Jagdish Singh, nephew of P.W. 3 has been made accused in the *fardbeyan* as from the evidence of P.W. 3 it is evident that in the night of 19.10.1991 informant raised alarm in the name of P.W. 3 that dacoits have come to his court-yard and as per the evidence of P.W. 3 after hearing the alarm about the presence of dacoits in the court-yard of the informant P.W. 3 went to his roof flashing torch to resist the dacoits and having not seen the presence of dacoits either in the court-yard or in the house of the informant or in the lane rebuffed the informant about the presence of dacoits that he was dreaming about their presence and by way of retaliation his nephew Onkar Singh, son of Jagdish Singh has been

made accused in the *fardbeyan* lodged by the informant in the morning of 20.10.1991.

15. Having considered the rival submission, now we proceed to consider the case law relied upon by the learned counsel for the appellant. Reliance placed by the counsel for the appellant over the judgment of the Supreme Court in the case of **Shambhu Nath Mehra v. The State of Ajmer** (supra) is misplaced. In the said case Shambhu Nath Mehra was convicted for drawing travelling allowance without undertaking journey in 2nd class railway compartment, placing reliance on Section 106 of the Evidence Act, holding that burden of proving that Mehra on the relevant date travelled in 2nd class compartment was on him. Reliance in this connection was placed on the evidence of booking clerk, who deposed that no 2nd class ticket was issued from the booking counter on the relevant date. The booking clerk also deposed that tickets were not always issued and the passengers could pay fare on the train and also could sometime purchase 3rd class ticket and pay the difference to the Guard in the train. The prosecution in the said case did not establish that Mehra had not adopted one or the other mode for payment of fare suggested by the booking clerk i.e. payment of fair in the train or payment of difference to the Guard by producing register and books both of Railway and the Department where Mehra worked, which the prosecution could have proved instead



prosecution only proved that no 2nd class ticket was issued on the relevant date. In the said case Supreme Court held that relevant material information about Mehra having undertaken journey on the relevant date in 2nd class compartment was as much within the special knowledge of the prosecution, as it was with Mehra and the prosecution could not have relied upon Section 106 of the Evidence Act for the reason that Section 106 of the Evidence Act is an exception to Section 101 of the Act and it is designed to meet certain exceptional cases in which it would be impossible or at any rate disproportionately difficult for the prosecution to establish the facts which is specially within the knowledge of accused and he could prove those facts without difficulty or inconvenience.

16. Similarly, in the case of **Mohd. Usman v. The State of Bihar** (supra) and **Murlidhar and Ors. v. State of Rajasthan** (supra) Supreme Court held that Section 106 of the Evidence Act will not apply to the facts of those cases as the prosecution did not proceed in those cases on the footing that the facts were specially within the knowledge of accused of those cases.

17. In the case of **State of W.B. v. Mir Mohammad Omar** (supra) Supreme Court considered Sections 106, 114 of the Evidence Act in Paragraphs 33, 36 to 38 of the judgment with reference to the law laid down in the case of **Shambhu Nath Mehra** (supra) and held in Paragraph 39 that the facts which the



prosecution proved including the proclaimed intention of the accused when considered in the light of the proximity of time within which the victim sustained fatal injuries and the proximity of the place within which his dead body was found are enough to draw inference that victim's death was caused by the same abductors and having held so Supreme Court dismissed the appeal assailing the conviction under Section 366/34 of the Penal Code and allowed the appeal filed by the State holding that the accused be also convicted for the offence under Section 302 read with Section 34 of the Penal Code.

18. In the case of **P. Mani v. State of Tamil Nadu** (supra) Supreme Court having taken note of the fact that the wife bolted the room from inside and when the smoke started coming out then the husband and other witnesses rushed towards the same and broke open the door held that in the aforementioned situation Section 106 of the Evidence Act cannot be said to have any application to the facts of the said case.

19. In the instant case, it was only the appellant who was privy to the manner in which his mother, brother were done to death in the night of 19.10.1991 in his house, as such, it was for him to have disclosed the correct manner of occurrence to the Investigating Officer which was within his special knowledge, but he chose not to disclose the same and misled the prosecution, as such, his case is covered by Section 106 of the Evidence Act.

20. In view of our discussion above, we find no merit in the appeal even though the weapon used for committing the two murders has not been traced. The appeal is dismissed. Informant-appellant is on bail in the light of the order of this court dated 06.01.1994, as such, his bail bond is cancelled and he is directed to surrender in the court below forthwith.

(V.N. Sinha, J.)

Jitendra Mohan Sharma, J. I agree

(Jitendra Mohan Sharma, J.)

Rajesh/A.F.R.

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