

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.994 of 2010

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Md. Muzahir @ Mozahid Mian son of late Abdul Latif, R/o village-
Fulwariya, P.s.- Maniyari, District- Muzaffarpur..... Appellant

Versus

The State of Bihar.... Respondent

with

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Criminal Appeal (DB) No. 1023 of 2010

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1. Md. Jamal
2. Md. Azhar
Both son sons of Late Murtuza Mian
3. Md. Sohail son of Tajamul Mian
4. Md. Mohid @ Md. Rahid son of Late Shaheed Mian
All resident of village- Fulwariya, P.S.- Maniyari, District-
Muzaffarpur.... Appellants

Versus

The State of Bihar.... Respondent

with

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Criminal Appeal (DB) No. 1029 of 2010

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1. Md. Nematullah S/O Md. Mozahir R/O Village - Fulwariya,
Police Station Maniyari, District - Muzaffarpur.. Appellant

Versus

The State Of Bihar Respondent

with

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Criminal Appeal (DB) No. 1032 of 2010

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1. Md. Umair son of Late Ismail Mian
2. Md. Nasrul son of Badlur Mian
3. Md. Anzar @ Md. Anza Mian son of Late Razil Mian
All R/o village- Fulwariya, P.S.- Maniyari, District-Muzaffarpur
..... Appellants

Versus

The State of Bihar.... Respondent

with

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Criminal Appeal (DB) No. 1098 of 2010

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Md. Rahamtullah son of Md. Mozahir, R/o village- Fulwariya, P.S.-
Maniyari, District- Muzaffarpur.... Appellant

Versus

The State of Bihar..... Respondent

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Against the judgment of conviction and order of sentence dated 19/23.07.2010 passed by Shri Shailendra Kumar Pandey, Additional Sessions Judge VI, Muzaffarpur in Sessions Case No. 21 of 2000.

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Appearance :

(In CR. APP (DB) No. 994 of 2010)

For the Appellant : Mr. Mr. Khurshid Alam, Advocate

For the Respondent : Mr. Ashwini Kumar Sinha, APP

(In CR. APP (DB) No. 1023 of 2010)

For the Appellant : Mr. Salahuddin Khan, Advocate

Mr. Syed Ehteshamuddin, Advocate

For the Respondent : Mr. S.C. Mishra, APP

(In CR. APP (DB) No. 1029 of 2010)

For the Appellants : Mr. Ajay Kumar Thakur, Advocate

Mr. Arvind Kumar Singh, Advocate

For the Respondent s : Mr. Abhimanyu Sharma, APP

(In CR. APP (DB) No. 1032 of 2010)

For the Appellant/s : Mr. Salahuddin Khan, Advocate

Mr. Syed Ehteshamuddin, Advocate

For the Respondent : Mr. Ajay Mishra, APP

(In CR. APP (DB) No. 1098 of 2010)

For the Appellant/s : Mr. Khurshid Alam, Advocate

Mr. Nasim Mokhtar, Advocate

Mr. Dinesh, Advocate

For the Respondent : Mr. Dilip Kumar Sinha, APP

For the Informant : Mr. Akhileshwar Pd. Singh, Sr. Advocate

Mr. Ajay Kumar Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE V.N. SINHA

and

HONOURABLE MR. JUSTICE JITENDRA MOHAN SHARMA

ORAL JUDGMENT

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

Date: 29-09-2015

These five appeals arise out of judgment and order dated 19/23.07.2010 passed by Additional Sessions Judge VI, Muzaffarpur in Sessions Case No. 21 of 2000 whereunder out of the 15 accused persons put on trial accused no. 1 to 10 have been convicted for the offence under Sections 302/34 of the Penal Code and sentenced to



suffer imprisonment for life with further direction to pay fine of Rs. 3,000/- each, in the event of failure to pay the fine to further suffer imprisonment for one month. Accused no. 8, 9 and 10 have also been convicted for the offence under Section 323 of the Penal Code, sentenced to suffer rigorous imprisonment for two months. The sentences imposed on accused no. 8 to 10 have been directed to run concurrently.

2. Prosecution case, as set out in the fardbeyan of Krishna Mohan Kishore, resident of village- Fulwariya, P.S.- Maniyari, District Muzaffarpur, recorded by Sub- Inspector Ranbir Singh of Town Police Station, Muzaffarpur on 03.06.1998 at 6:30 am admitted on Bed No. 16, Male Ward in Sadar Hospital, Muzaffarpur, is that he is recording his fardbeyan in injured condition. In the previous night 2/3.06.1998 informant, his brother Dr. Murli Manohar and Anil Kumar Saxena, his son, was sleeping in the Sahan of their house. Around 1:00 am, co-villager Md. Rahamtullah son of Muzahid Mian, Md. Nematullah son of Md. Mojahir Mian, Md. Mozahir son of Latif Mian, Md. Jamal son of Murtuza Mian, Md. Azhar son of Md. Murtuza Mian, Md. Umair son of Ismail Mian, Md. Mohid son of Shaheed Mian, Md. Suhail son of Tazamul Mian, Md. Nasrul son of Badlu Mian and Md. Anzar son of Aziz Mian came variously armed and Muzahid Mian stated that Dr. Murli Manohar is the man behind the case and he should be killed. Murli Manohar hearing the assertion ran to the



Veranda, Md. Mohid, Md. Jamal caught him and thereafter Md. Nematullah shot at him causing injury on his thigh near hydrocil. There was profuse bleeding from the wound. Informant ran to rescue his brother Md. Umair assaulted him on right ankle with iron rod, causing injury and his fall. Md. Nasrul also assaulted the informant on his waist with iron rod. Son of the informant Anil Saxena also ran to save the two, was assaulted by Md. Anzar with lathi and also became injured. On alarm being raised, villagers Raj Mangal Sah, Bhuneshwar Sah, Ram Pratap Pandit, Ram Nath Pandit, Sita Ram Pandit and others came. Having seen the villagers coming, Md. Sohail, Md. Anzar, Md. Nematullah exploded bomb to frighten them. The villagers could not intervene to help the informant and others though they arrived in Sahan. The accused persons having committed the occurrence fled away. The informant in the fardbeyan also stated about the motive behind the occurrence i.e. pending civil dispute, claim made by the Hindu community over the lands of the graveyard in which his brother Dr. Murli Manohar was making effective pairvy. It is also stated in the fardbeyan that 02.06.1998 was the date fixed in the suit and his brother had gone to make pairvy in court and occurrence has taken place in the night. Informant further stated in the fardbeyan that the villagers brought him for treatment. He also stated that the condition of his brother Dr. Murli Manohar was serious as such he was taken for treatment to S.K.M.C.H., Muzaffarpur but



succumbed to the injury in the way. Informant having read his fardbeyan as also the contents read over to him, found the same true, put his signature thereon. Ranbir Singh Sub-Inspector of Town Police Station forwarded the fardbeyan to Officer-In-Charge Maniyari Police Station for necessary action as the place of occurrence lies in his jurisdiction. On the basis of fardbeyan Madan Paswan Officer-In-Charge Maniyari Police Station registered the First Information Report on 03.06.1998 at 2:30 pm indicating that he will investigate the case. From column no. 3 of the first information report it appears that the same was sent to court through special messenger which was perused by the S.D.J.M. on 04.06.1998. The inquest proceedings on the dead body of the deceased was conducted on the Veranda of the emergency ward of S.K.M.C.H. on 03.06.1998 at 2:00 pm. From column no. 8 of the inquest report it appears that Dr. Murli Manohar was killed inflicting firearm injury. It further appears from the same column that the inquest proceeding was conducted in presence Prem Narayan Sah and Shushil Paswan both resident of village Fulwaria within Maniyari Police Station. After inquest the dead body was sent to post mortem house on 03.06.1998 at 2:30 pm. Column No. 3 of the post mortem report would indicate that dead body was sent for autopsy from S.K.M.C.H. to the post mortem house also in the S.K.M.C.H. at 2:30 pm and received in the post mortem house at 3:00 pm and within 15 minutes post mortem conducted at 3:00 pm



on the same day. Post mortem report also confirm that Dr. Murli Manohar was shot by firearm on medial side of right thigh 6" above the knee. On dissection muscles and vessels of thigh was found grossly lacerated and on tracing the direction of projectile it was found going straight upward with fracture of right hip bone and rupture of urinary bladder. Post mortem report is indicative of the fact that at the time when Dr. Murli Manohar was shot he was in lying position. In the light of first information report, the investigating officer examined the witnesses named therein as also others, considered inquest, post mortem report and found the case true submitted chargesheet against those named in the fardbeyan as also five others. In the light of the chargesheet, cognizance was taken and after supply of police papers the case was committed to the court of Sessions. The trial court framed charges against the accused persons sent up for trial under order dated 08.05.2004 in which the 15 accused persons pleaded not guilty and claimed to be tried.

3. In support of charge, prosecution examined as many as 16 witnesses. PW 1 Dinesh Prasad is the co-villager of the informant, he has come to the Sahan of the informant after alarm was raised, he has seen Dr. Murli Manohar, informant and his son Anil Saxena in injured condition. He has further claimed to have identified 3 of the appellants. Accused No. 3 Md. Jamal, accused no. 4 Md. Mohid and accused no. 7 Md. Azhar were seen by him running away



from the Sahan of the informant. PW 2 Raj Mangal Sah is also a co-villager of the informant and he has seen in the torch light brother of the informant Dr. Murli Manohar, informant and his son Anil Saxena in injured condition as also accused no. Md. Nematullah, accused no. 7 Md. Azhar and accused No. 5 Md. Sohail all resident of Muslim Tola hurling bomb and going back towards their tola. He has also identified other appellants amongst the miscreants present in the Sahan of the informant. PW 3 Dr. Mumtaz Ahmad served as Associate Professor in Forensic Medicine Department of Sri Krishna Medical College on 03.06.1998, conducted post mortem examination on the dead body of Dr. Murli Manohar. He has supported his post mortem report and stated in paragraph 12 that projectile was going upward with fracture of hip bone and rupture of urinary bladder which is possible where the victim is shot in lying position. He has also stated in the same paragraph that the firing was done from a distance of more than one and half feet. PW 4 Shashi Bhushan Kumar is the brother of deceased Dr. Murli Manohar, at the time of occurrence he was sleeping with his family members inside the house. He has also supported the first information report. He claims himself to be the eye witness of the occurrence and is named in the fardbeyan as witness of the occurrence. In paragraph 4 of his evidence PW 4 has been confronted with the suggestion that on 02.06.1998 Dr. Murli Manohar had not gone to court to make pairvy as on that date no



Haziri was filed on his behalf. In the same paragraph this witness was also suggested that none of the accused persons had any connection with Title Suit No. 190 of 1995. Learned counsel while taking us to the evidence of PW 4 also referred to the Haziri filed in Title Suit No. 190 of 1995 on 02.06.1998 which is available in the record. We have also seen the Haziri which has been filed by the Advocate clerk on behalf of plaintiff Dr. Murli Manohar and others. PW 4 has also supported the fardbeyan. In his cross-examination also no material contradiction has been extracted from him except that he has not made such police statement on 03.06.1998 at 8:30 am as deposed in court. PW 5 Anil Saxena is the son of the informant and an eye witness of the occurrence as he along with his father was sleeping in the Sahan on a Chauki where the deceased was also sleeping on another Chauki. He has also been injured in the occurrence. PW 5 has also supported the fardbeyan of his father. In his lengthy cross-examination nothing material has been extracted from him. PW 6 Ram Pratap Pandit is the co-villager of the informant and came to the Sahan of the informant in the night of occurrence after hearing the bomb explosion noise. He has, however, not identified any of the miscreants but learnt about the occurrence and the accused persons from the informant and his family members. PW 7 Manoj Kumar is the brother of deceased Dr. Murli Manohar, at the time of occurrence was also sleeping inside the house with his family members. He has



supported the first information report and has further stated that after being shot Dr. Murli Manohar raised the cry that he has been shot by Md. Rahamtullah son of Mozahid Mian, whereafter he went inside the house, opened the back door of his house, raised alarm, hearing the alarm raised by PW 7 the villagers came to his Sahan, thereafter, the accused persons exploded bombs restraining the villagers from intervening. PW 8 Dr. S. K. Sarangi served as Medical Officer in the Muzaffarpur Sadar Hospital, examined both PW 5, PW 15 on 03.06.1998 and found injury no. 1 on the person of PW 5 as grievous but simple injuries on the person of PW 15. PW 19 Rama Devi is the wife of Dr. Murli Manohar, was sleeping in the room inside the house. PW 10 Bipin Kumar is the son of Dr. Murli Manohar, at the time of occurrence was sleeping at the roof of the house. PW 11 Baby Devi is the daughter of the informant, at the time of occurrence was also sleeping at the roof of the house. PW 12 Prem Narayan Sah is the witness of inquest and PW 13 Shyam Nandan is the witness of seizure. PW 14 Mithlesh Devi is the wife of the informant, at the time of occurrence was also sleeping at the roof of the house. PW 15 Krishna Mohan Kishore is the informant of the case. PW 16 Madan Paswan is the Investigating Officer, after receiving information about the occurrence from DW 1 Munshi Paswan the Chaukidar on 03.06.1998 at 6:55 am came to the place of occurrence, conducted seizure at 8:30 am and preliminary investigation by recording

statement of PWs 4, 7 at the place of occurrence and then went Sadar Hospital Muzaffarpur at 12:00 noon and received the fardbeyan from Scribe at 12:30 pm.

4. The defence has also examined Munshi Paswan Chaukidar of village Fulwariya and Pakhara within Maniyari Police Station, has proved the Station Diary Entry No. 38 dated 03.06.1998 entered on the basis of his information in Maniyari Police Station.

5. Learned counsel for the appellants has assailed the judgment of conviction and order of sentence on the ground that the prosecution has not recorded the true version of occurrence in the fardbeyan as the same was lodged after more than 2-3 hours of the occurrence after due consultation between the members of the prosecution party. In this connection, it is submitted that Chaukidar Munshi Paswan DW 1 learnt about the occurrence and thereafter, came to Maniyari Police Station and furnished the information which was noted in the Station Diary vide Station Diary Entry No. 38 (Ext. A) on 03.06.1998 at 6:55 am and perusal of the said entry would indicate that the identity of the assailants was not known which fact the Chaukidar reported at the Police Station whereafter the Officer-In-Charge Maniyari Police Station proceeded for village Fulwariya to the house of the informant and conducted seizure of the incriminating articles found at the place of occurrence as also recorded the Police Statement of PWs 4, 7 and other inmates of the house available there



at that time. According to the learned counsel, having conducted preliminary investigation at the place of occurrence, Officer-In-Charge Maniyari Police Station came to Sadar Hospital, Muzaffarpur and collected the fardbeyan from the Scribe i.e. the Sub-Inspector Ranbir Singh of Town Police Station and proceeded to S.K.M.C.H and conducted the inquest proceeding over the dead body of Dr. Murli Manohar lying on the stretcher in the Veranda of Emergency Ward S.K.M.C.H. at 2:00 pm and thereafter, returned to Maniyari Police Station and then registered the first information report. It is submitted that the version recorded through the fardbeyan is not similar to the one which was recorded by PWs 4 and 7 at the place of occurrence in the morning at 8:30 am. It is submitted that the occurrence has taken place around 1:00 am in the night, Dr. Murli Manohar was removed from the place of occurrence by the villagers on a jeep soon after the occurrence, informant and PW 5 did not accompany Dr. Murli Manohar on the jeep and remained at the place of occurrence where PWs 4 and 7 were also present. It is submitted had the informant identified the appellants committing the overt act which he has alleged against them in the fardbeyan recorded at 6:30 am, nothing prevented him to disclose the same version to PWs 4 and 7 before leaving the house for Sadar Hospital at 5:30 am and had he informed PWs 4 and 7 about the complicity of the appellants and the overt acts committed by them, then there was no reason for PW 4



not to disclose the fact in his police statement recorded at 8:30 am or thereafter that his brother Dr. Murli Manohar was shot by Md. Rahamtullah son of Md. Mozahir and that PW 7 learnt about the assailants and the overt act committed by them from his brother when he accompanied him in the jeep with the villagers. The Investigating Officer having reached the place of occurrence in the morning, not only conducted seizure of the incriminating articles found at the place of occurrence but also recorded the statement of the witnesses available in the house including PW 4, 7. To support the aforesaid submission learned counsel referred to evidence of investigating officer PW 16 in paragraph no. 4, 17. In the light of the aforesaid evidence on record, it is submitted that neither the informant nor his son, nor any other person in the house has seen these appellants committing the overt acts, otherwise, there was no reason for PW 5 also, who did not accompany Dr. Murli Manohar, remained in the house and left for Sadar Hospital, Muzaffarpur along with the informant at 5:30 am, to disclose such fact to other witnesses.

6. Learned counsel for the other appellants further submitted that prosecution story, as deposed by the eye witnesses that Dr. Murli Manohar was shot from a close range that too in standing position by Md. Rahamtullah when accused No. 3 Md. Jamal and accused No. 4 Md. Mohid caught his hands, does not appear to



be supported by the medical evidence as PW 3 Dr. Mumtaz who conducted autopsy on the person of the deceased has found that Dr. Murli Manohar was shot in his thigh 6" above knee while he was in lying position and the projectile has traveled upwards. It is submitted that had the deceased been shot in standing position from a close range, the projectile would have passed through and through and not upwards. In this connection, reliance is placed on a judgment reported in **2004 (2) PLJR page 32 (paragraph 20, 32 to 34)** in the case of **Vijay Kumar @ Sharma & Ors. Vs. The State of Bihar.**

7. Learned counsel further submitted that motive of the occurrence, as alleged in the fardbeyan that occurrence has taken place as there was dispute over the land of graveyard over which the members of Hindu community had raised claim and filed Title Suit which was being prosecuted by Dr. Murli Manohar and these appellants were resisting the prayer made in the Title Suit, has also not been proved as according to the learned counsel, on the date fixed in the suit 02.06.1998, Dr. Murli Manohar had not gone to Court and the story that he was threatened on that date in the court by these appellants is not true and in this connection, reference is made to the Haziri filed on behalf of the plaintiffs by their Advocate Clerk and it is submitted that there is nothing on record to suggest that Dr. Murli Manohar had come to court to prosecute the suit on 02.06.1998. It is further submitted that these appellants are not in



any way connected with the subject matter of the suit as they are not even made defendants therein. In this regard reference is made to the plaint of the suit (Ext. 11) and the written statement (Ext. 12) filed by the defendants in the suit. It is submitted that perusal of the plaint and written statement would indicate that appellants had neither any connection with the suit property nor they were parties in the suit proceeding. In this connection, reliance is placed on the judgment reported in **1974 BBCJ (Supreme Court) page 163** in the case of **The State of U. P. Vs. Hari Prasad & Ors** and it is submitted that in a case of murder, it is not necessary to prove the motive which led the assailants to commit such offence but, in case, motive is alleged by the prosecution, they are required to prove the same, otherwise adverse inference is required to be drawn against them.

8. Learned counsel further submitted that informant and his son PW 5 claimed that they suffered injury during occurrence, which claim of the two, according to learned counsel, is wholly false as when shots were being fired and bombs exploded indiscriminately to scare away the villagers who had come to the Sahan of the informant on alarm being raised, the two have suffered injury with hard and blunt substance as PW 5 suffered swelling 2"x2" on right clavicular region and PW 15 also suffered swelling 3"x3"x2" on right ankle, the injury report dated 03.06.1998 from PW 8 Dr. S.K.



Sarangi, Medical Officer, Sadar Hospital, Muzaffarpur has been obtained because of their proximity with him as PW 15 informant Krishna Mohan Kishore is an employee in the same hospital. In this connection, learned counsel also referred to the evidence of PW 8 and submitted that he examined the two, PW 5 and PW 15, on 03.06.1998 at 4:15 am but on their own showing PW 15 and 5 left for Sadar Hospital after 5:30 am on 03.06.1998. It is submitted that both PW 5 and 15 had not suffered any injury and they have just feigned injury and got themselves admitted in the hospital exercising their influence over the hospital administration because PW 15 is a Ward Attendant in the hospital. Learned counsel in this connection, have also referred to the evidence of PW 15 where he has admitted that after being admitted in the hospital on 03.06.1998 he took leave from the nurse attending on him and came to attend the funeral of Dr. Murli Manohar and thereafter, went back to the hospital on 05.06.1998. It is submitted that aforesaid conduct of informant and his son PW 5 is indicative of the fact that they had not suffered any injury and perhaps were also not available in the house at the time of occurrence, otherwise, with such minor injuries they were required to have accompanied Dr. Murli Manohar to the hospital in the jeep along with the villagers.

9. Learned counsel for the State and the informant have supported the judgment. According to them, PW 15 informant and PW



5 his son have categorically deposed that these appellants led by Md. Rahamtullah, shot Dr. Murli Manohar as also assaulted the informant and his son PW 5 with rod and lathi respectively. From their evidence it is also established that in order to scare away the villagers, who came to the Sahan of the informant after alarm was raised by PW 4 and 7 by opening the rear door of the house as is appearing from the sketch map drawn by the learned counsel for the informant on the basis of description of the place of occurrence given in the evidence of the Investigating Officer and the informant, bombs exploded, indiscriminate firing resorted to this Court is required to maintain the conviction of the appellants even though from the plaint, written statement (Exts. 11, 12) filed in Title Suit 190 of 1995 pending in the court of Munsif, West Muzaffarpur, it does not appear that appellants were party in the said suit. Learned counsel further submitted that the submission of learned counsel for the appellants that First Information Report and fardbeyan of the present case is hit by Section 162 of the Code of Criminal Procedure as investigation of the case had begun soon after Station Diary Entry No. 38 dated 03.06.1998 was made in Maniyari Police Station on the basis of information furnished by Chaukidar Munshi Paswan which persuaded Officer-In-Charge Maniyari Police Station Madan Paswan to proceed to the place of occurrence, seize incriminating articles, record statements of PWs 4, 7 and other inmates of the house cannot be a



ground not to treat the fardbeyan of the instant case as the first version of the occurrence. In this connection, it is submitted that though the Station Diary Entry furnishes the definite information that Dr. Murli Manohar being shot in the night by unknown criminals, injured while proceeding to S.K.M.C.H. succumbed to the injury and there is tension in village Fulwariya between Hindu and Muslim communities. Such information cannot be treated as first information report as the same was recorded at 6:55 am whereas the fardbeyan of the instant case was recorded by PW 15 at 6:30 am in Sadar Hospital, Muzaffarpur. He further submitted that even if definite information was available to the Chaukidar about Dr. Murli Manohar having been shot by unknown criminals, succumbed to the injury while on way to S.K.M.C.H., such cryptic information cannot be treated as fardbeyan on the basis of which first information report can be registered as the Chaukidar while furnishing such information to the Police Station had not disclosed the source of his information, more so when Investigating Officer has admitted in evidence that fardbeyan of the case has already been recorded. In this connection, reliance is placed on the judgment of the Supreme Court in the case of **Binay Kumar Singh & Ors. Versus The State of Bihar** reported in **(1997) 1 Supreme Court Cases 283** (paragraph 9).

10. Learned counsel for the informant further submitted that the evidence of the informant and his son PW 5 should be relied



upon and placing reliance on their evidence the embellishments noticed in the evidence of PWs 4 and 7 may be ignored and conviction maintained. Learned counsel further submitted that the post mortem report and medical evidence of PW 3 indicate that Dr. Murli Manohar was shot and the manner in which he is said to have been shot, possibility thereof having not been ruled out by autopsy surgeon, placing reliance on the evidence of the informant, his son the conviction of the appellants be upheld. In support of the aforesaid submission reliance is placed on the judgment of Supreme Court in the case of **Vijay Pal vs. State (GNCT) of Delhi** reported in **2015 (3) PLJR (SC) 3** (paragraph 13).

11. In view of the rival submissions, we have considered the contents of the fardbeyan of PW 15 Krishna Mohan Kishore which was lodged while he was admitted on Bed No. 15 in the Male Ward of Sadar Hospital, Muzaffarpur on 03.06.1998 at 6:30 am. In the fardbeyan PW 15 has asserted definite overt acts against the appellants as according to him, the occurrence took place in the night between 2/3.06.1998 around 1:00 am and during the occurrence besides the deceased Dr. Murli Manohar, informant and his son PW 5 also suffered injury but after the occurrence it was only Dr. Murli Manohar was taken to hospital in the jeep by the villagers and while being taken to S.K.M.C.H. for treatment, Dr. Murli Manohar succumbed to the injury. Informant and his son proceeded for their



treatment in Sadar Hospital, Muzaffarpur at 5:30 am and recorded the fardbeyan in the hospital at 6:30 am. In course of evidence the members of prosecution party including PW 4 claimed that Dr. Murli Manohar was shot by appellant Rahamtullah son of Md. Mozahir which fact was not disclosed by PW 4 before the Investigating Officer as proved by the Investigating Officer during his evidence in paragraph 89 of his evidence. Similarly PW 7 has stated in his police statement that on account of fear he raised alarm from the rear door of his house that Muslims of the village have killed his doctor brother and that his doctor brother was brought to the hospital by him in unconscious state. He has also not stated before the Investigating Officer that PW 15 informant Krishna Mohan Kishore informed him that he was assaulted by Umaid and Nasrul. Aforesaid police statement of PW 7 has been proved by Investigating Officer PW 16 in paragraph 92 of his evidence. It is therefore, evident that prosecution witnesses namely, PWs 4 and 7 while deposing in court have made such embellishments which cannot be reconciled with their police statements and the prosecution case as disclosed by the informant in the fardbeyan and disclosed by him and his son PW 5 in court. In this connection, we may also state that informant has categorically stated in the fardbeyan that villagers had only accompanied injured Dr. Murli Manohar. It is, therefore, evident that after the occurrence and removal of injured Dr. Murli Manohar in the jeep by the villagers,



informant, PW 5, PWs 4 and 7 remained at the house and nothing prevented the informant and PW 5 to disclose the manner of occurrence to PWs 4 and 7. Had the informant and PW 5 disclosed the manner of occurrence, as stated by them in the fardbeyan as also deposed in court, to PWs 4, 7, nothing prevented PWs 4, 7 to disclose the same facts to the Investigating officer who recorded their statement in the place of occurrence village/house at 8:30 am. From the Police statement of PWs 4, 7 duly proved by the Investigating Officer in paragraphs 89 and 92, we are satisfied that they have not deposed the same manner of occurrence to the Investigating Officer which has been put forward by the informant and his son. The claim of the informant and his son that they were present at the time of occurrence and are the eye witnesses of the occurrence is also doubtful as they have claimed in their evidence that they suffered injury during the occurrence, yet did not travel with Dr. Murli Manohar in the same jeep and then, claimed that they came to Sadar Hospital Muzaffarpur after 5:30 am as has been admitted by PW 15 in paragraphs 16 and 58 of his evidence at page 126 of the brief. From the evidence of PW 8 Dr. S. K. Sarangi, it appears that informant and his son PW 5 were examined by him at 4:10 am, it is to be noted here that PW 15 is an employee of Sadar Hospital Muzaffarpur and from his evidence it also appears that after being admitted in the hospital he left the hospital after seeking permission from the nurse

and returned on 05.06.1998. The injury which he and his son suffered, by any standard, cannot be treated as grievous for the reasons that PW 5 has suffered swelling 2"x2" on right clavicular region which injury, Dr. S. K. Sarangi has described as grievous in nature as according to Dr. Sarangi, there is fracture of right clavical without even taking x-ray. In this connection, we also note that on the date of admission in hospital, PW 15 had taken leave from the nurse, left the hospital to return only on 05.06.1998 which fact is also admitted by him in paragraph 68 of his evidence.

12. For the reasons aforementioned, in the facts and circumstances of the case, we are of the view that the appellants deserve grant of benefit of doubt. The impugned judgment of conviction and order of sentence is accordingly, set aside. These appeals are allowed. Appellants in these appeals are on bail, as such are discharged from the liabilities of their respective bail bonds.

(V.N. Sinha, J)

(Jitendra Mohan Sharma, J)

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