

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.1248 of 2006

Arising out of PS.Case No.-221 Year-2004 Thana-Begusarai Town District- BEGUSARAI

Surendra Sah @ Suliya, Son of Fulena Sah, Resident of Village Chatti Road,
Ratanpur, P.S. Town, District Begusarai.

.... Appellant

Versus

The State of Bihar

.... Respondent

Appearance :

For the Appellant : Sri Ajay Kumar Thakur, Advocate
Sri Imteyaz Ahmad, Advocate
Sri Nitesh Kumar, Advocate
For the State : Sri Dilip Kumar Sinha, APP

CORAM: HONOURABLE SHRI JUSTICE DHARNIDHAR JHA

and

HONOURABLE SHRI JUSTICE GOPAL PRASAD

ORAL JUDGMENT

(Per: HONOURABLE SHRI JUSTICE DHARNIDHAR JHA)

Date: 05-02-2015

Appellant Surendra Sah @ Suliya is before us through the present appeal which he filed to challenge the correctness of the finding of his guilt and the appropriateness of the sentence which was passed upon him by the learned Presiding Officer of Fast Track Court No. IV, Begusarai on 13.11.2006 and 17.11.2006 respectively in Sessions Trial No. 100 of 2005. After being indicted of committing the two offences, like, 302 of the Indian Penal Code and 27 of the Arms Act, the appellant was held guilty of committing them and after being heard under Section 235 Cr.P.C., he was directed to suffer rigorous imprisonment for life under Section 302 of the Indian Penal Code and rigorous imprisonment for three years also under Section 27 of the Arms Act. The learned trial Judge directed that the sentences were to

run concurrently.

2. The prosecution story as per the *fardbeyan* (Ext.4) is that the informant Subodh Kumar (P.W.8) along with his father Kamaldhari Singh @ Bela Singh (P.W.3) as also his brother deceased Vinod Kumar Singh had left their house to go to their orchard which was situated at a distance of about 500 yards north-west of his house. While they were returning from their orchard to their house and when they had reached near the house of one Kishore Sonar situated in Sonarpatti part of the village, four accused persons including the present appellant named in the First Information Report appeared there armed with pistols and surrounded the deceased. This appellant is said to have asked the deceased as to why he did not pay up the *Rangdari* tax and is said to have simultaneously fired at the deceased which hit him in his left arm. The deceased started running for his life when accused Vijay Poddar fired the other shot which hit him in his back. The deceased ran for some distance, but fell down whereupon the other accused Chandan Kumar @ Ganna fired into his temple as a result of which the deceased breathed his last there at the spot.

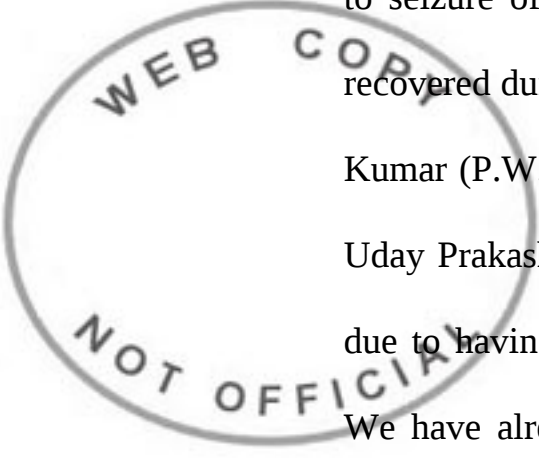
The informant stated that he attempted to save his brother but the fourth accused Munna Sah fired a shot at him which did not hit him. The four accused persons ran away towards north firing shots.

3. As regards the reason for committing the murder of deceased Vinod Kumar Singh, it was stated that about ten days prior to the incident, accused Chandan Kumar @ Ganna had asked the deceased to pay up Rs. 50,000/- as extortion money which had not been paid to him and the deceased rather disseminated the above story amongst the villagers. P.W.1 stated that the occurrence had been witnessed by him and others of the village.

4. The above statement of P.W.1 was recorded by P.W.9 S.I. Nihar Bhushan who was the Officer-in-Charge of Begusarai Town Police Station at 8.00 A.M. on his arrival at the village or at the scene of occurrence after having received some information from undisclosed sources that someone had been murdered in village Ratanpur. After having recorded the statement (Ext.4), P.W.9 had held inquest upon the dead body of the deceased in presence of the witnesses and the report was prepared by A.S.I. R. N. Prasad at the order of P.W.9. P.W.9 also appears inspecting the place of occurrence during which course he found two spent up cartridges of 9 m.m. bores and seized the same after preparing the seizure memo which was also written by A.S.I. R.N. Prasad. Seizure memo was marked Ext.1 during trial. P.W.9 thereafter returned to the police station and drew up the First Information Report (Ext.8) and handed over the investigation to P.W.9 S.I. Kashi Nath Manjhi.

5. S.I. Kashi Nath Manjhi after taking up the investigation and having received the documents, like, copy of the inquest report and the seizure memo, inspected the place of occurrence which was a road running from north to south situated at village Sonarpatti Mianchak. It was 8' in width. P.W.10 found copious blood at the place of occurrence not only on the road but also on the wall which was situated by the side of it. The wall was bearing some blood marks. During the inspection of the place of occurrence, the Investigating Officer (P.W.10) found gun shot marks on the wall also. P.W.10 had recorded the statement of witnesses before he had embarked on the inspection of the place of occurrence. P.W.10, after concluding the investigation had submitted the charge-sheet for trial of the accused persons.

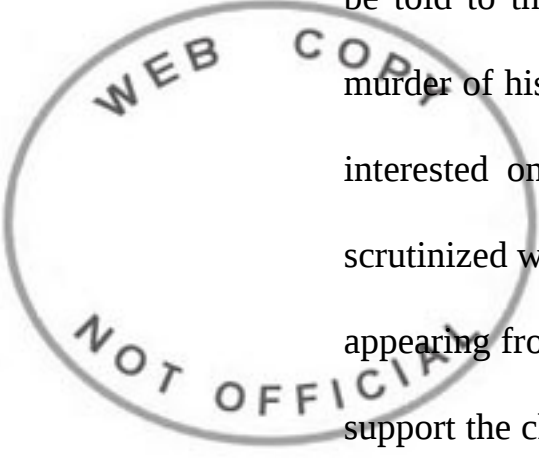
6. Out of the four accused who had been sent up for trial, Vijay Poddar evaded justice and was declared an absconder. The other accused Chandan Kumar @ Ganna was found juvenile and his case was sent to the appropriate authority for enquiry while the third accused Munna Sah was murdered leaving the solitary appellant on trial. During the course of trial, a total number of 11 witnesses were examined, out of whom Kanchan Kumar (P.W.1), Kamaldhari Singh @ Bela Singh (P.W.3) who happened to be the father of the informant and the deceased, and Subodh Kumar (P.W.8) the informant, deposed as



eye witnesses to the occurrence. Santosh Kumar (P.W.2) was a witness to seizure of blood stained earth and the cartridge cases which were recovered during the course of investigation by P.Ws. 9 and 10. Pankaj Kumar (P.W.4), Sunil Kumar (P.W.5), Vidya Nand Singh (P.W.6) and Uday Prakash Singh (P.W.7) had given evidence as hearsay witnesses due to having learnt about the incident from Subodh Kumar (P.W.8). We have already pointed out that S.I. Nihar Bhushan and S.I. Kashi Nath Manjhi were the two police officers who had investigated the case. P.W.11 Dr. Dinesh Kumar Rajak had held postmortem examination on the dead body of the deceased and had prepared the postmortem examination report (Ext.10).

7. The defence did not lead any evidence.

8. Sri Ajay Kumar Thakur, the learned counsel appearing on behalf of the appellant after taking us through the evidence of witnesses submitted that it was probably a blind murder which had taken place sometimes in the night or during the wee hours of 25.07.2004 and after finding the dead body and finding no clue, the informant hatched up a story implicating the present appellant and others for reason of enmity with him. Sri Thakur was submitting that the evidence of witnesses was suspect as the same was inconsistent with that of the doctor (P.W.11) and it appears that in spite of having approached the police first, P.W.8 Subodh Kumar did not give

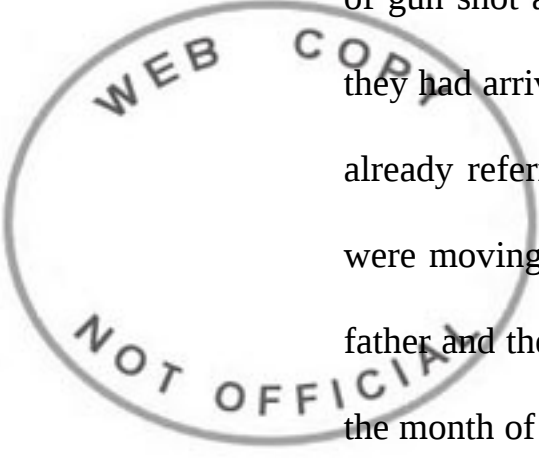


statement at the earliest only because he was not sure as to what was to be told to the police as regards the description of commission of the murder of his brother. It was contended that the witnesses were highly interested on account of being related and their evidence has to be scrutinized with caution and as may appear from the very circumstances appearing from the evidence of the witnesses they appear coming out to support the charges. It was lastly contended that the very genesis of the prosecution case that the deceased along with his brother Subodh Kumar (P.W,8) and his father Kamaladhari Singh @ Bela Singh (P.W.3) had gone to have a round of their orchard and the incident had occurrence while they were coming back from the orchard appears a suspicious story as the Investigating Officer was not shown the orchard which was visited by the three.

9. Sri D.K. Sinha, the learned Additional Public Prosecutor was pointing out to us the consistency in the story of the three witnesses, i.e., P.Ws. 1, 3 and 8 as regards the participation of the accused by telling us from the evidence, their individual roles and was further submitting that the medical evidence was supporting the oral testimony and the charge was rightly held proved. Sri Sinha was also submitting that there was support from other witnesses also arrived who at the place of occurrence after the incident was over and found the dead body lying and were further told by the informant as to who had

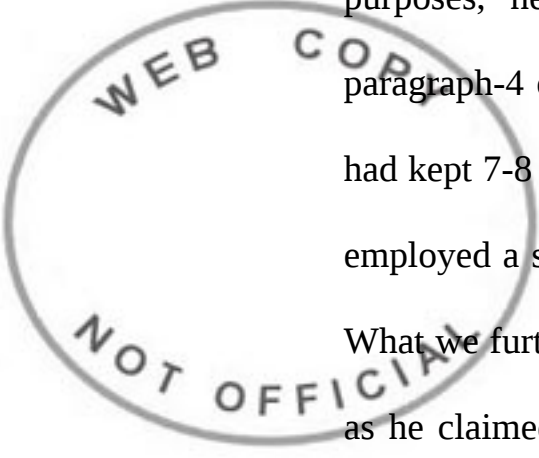
perpetrated the offence.

10. It is admitted that the occurrence was committed amidst the village on a public road. The description of the place of occurrence which has been given by P.W.10 Kashi Nath Manjhi in paragraph-6, itself indicates that to the east of the place where the occurrence appeared taking place was situated the house of one Garib Das. To its west was the boundary wall of one Sheo Shankar Singh and his fallow land and an orchard. In south of the place where blood was found was the bamboo clump of Sheo Shankar Sinha and in the north was the road as also the electric pole besides the houses of other villagers. It may further appear from the evidence of P.W.8, the informant, that the place where the incident had taken place was surrounded by many houses and it is very much admitted that the incident had taken place by the side of the house of one Kishore Sonar. Besides, the time at which the occurrence had taken place appears such a time when the villagers were quite awoke and they were moving to and fro on the road where the incident had taken place. This appears stated by P.W.8 in paragraph-16 of his deposition. The further fact that just after the incident, many persons converged upon the place of occurrence, as may appear from the few last lines of paragraph-15 of P.W.8, also is indicative of the surrounding area of the place of occurrence being thickly populated. P.Ws. 4, 5, 6 and 7 claimed that



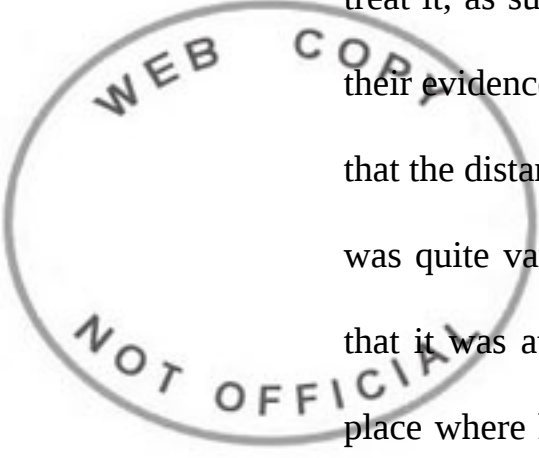
they rushed to the place of occurrence after having picked up the sound of gun shot and we do not have any reason to discard their claim that they had arrived at the place of occurrence due to that. P.W.8, we have already referred to, has stated in last line of paragraph-16 that people were moving to and fro on the same road on which the informant, his father and the deceased brother were also moving. It was 6.30 A.M. in the month of July when the sun must be out with all its brightness. We, as such, expect that there should have been many independent persons who could have been there to see the occurrence and also to know as to who had perpetrated the crime. However, no independent person came to depose that he had seen any particular person, may be the present appellants who had perpetrated the crime in the manner as alleged by the prosecution or in any other manner.

The prosecution examined P.W.1 Kanchan Kumar who admittedly was the *Sadhu* of P.W.8 Subodh Kumar and was thus, related to him. P.W.1 Kanchan Kumar has given reason as to why he was on or around the place of occurrence to see the offence being committed. P.W.1 stated that he was running a dairy by keeping a herd of cows and he used to have about 1½ *Mann* (i.e., about 60 Kgs.) of milk and he used himself to take the milk to the market. We do not discard his claim that he could be running a dairy farm and he was milching the cows to the extent he claimed but, what we found from his



cross-examination was that for tending the cows and for milching purposes, he had employed a servant also as may appear from paragraph-4 of P.W.1. We simply could not expect it that a man who had kept 7-8 cows as per his own evidence at paragraph-4 and who had employed a servant should himself go to sell his milk in market place. What we further find is that in spite of having seen the occurrence and, as he claimed, in spite of having remained at the place of occurrence near the dead body, he did not make any statement to the first Investigating Officer, i.e., P.W.9. It was only after sometimes or on other day that P.W.1 gave his statement to P.W.10. Moreover, he might have claimed that he was there near the place of occurrence to witness the occurrence but P.W.8, the informant of the case, in cross-examination (paragraph-15 at page 41 of the paper book) was stating that at the time when the shots were fired at the deceased besides himself, his father (P.W.3) and his deceased brother, there was none present there and persons, like, P.W.1 and others had arrived subsequently who were told by him about the incident. Thus, we find that the presence of P.W.1 becomes doubtful.

11. P.Ws. 3 and 8 had claimed their presence at the scene of occurrence by telling the court that they were coming back after visiting their orchard. Questions were persistently put to the witnesses on the details of the orchard and except the distance, the two

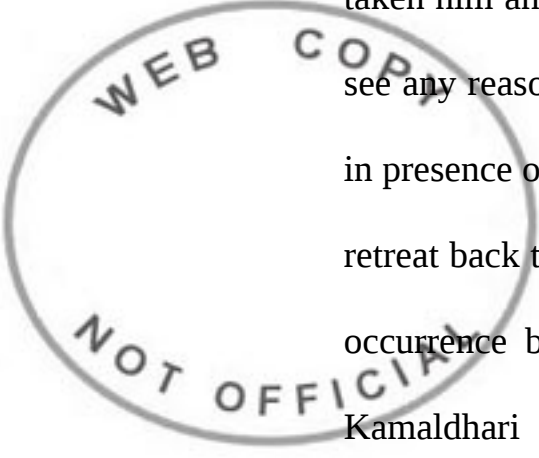


witnesses P.Ws. 3 and 8 could not give any further details. We do not treat it, as such, a damaging conduct on the part of P.Ws. 3 and 8 that their evidence be merely rejected on that ground but what we found was that the distance from their house which was stated by P.W.8 and P.W.3 was quite varying. P.W.8 was stating in the First Information Report that it was at 500 yards from his house and he further stated that the place where his brother was killed was at about 450 yards. His father P.W.3 was stating that the distance of the orchard from his house was about 100 yards. We were searching for an evidence as to whether either of the two Investigating Officers had the opportunity of visiting the orchard so as to, first, finding out its existence and secondly, to find out indeed there were *sheesham* trees which had dried up and which had fallen there. P.W.8 stated in paragraph-13 that he himself, his father and his deceased brother had gone into the orchard to see those *sheesham* trees which had dried up. However, what we find is that P.W.8 could not point out as to in which village, the orchard was situated (P.W.8, paragraph-11). He further stated that many trees of *sheesham*, lemon and mango were there in the orchard and it would have been a useful piece of evidence for us if the same had been shown to the Investigating Officer or the Investigating Officers had gone there themselves to find out as to whether there was an orchard of the description which was given by the witnesses. We have doubt that

indeed the witnesses were coming from the orchard after visiting it and on that particular reason we find their evidence a bit doubtful.

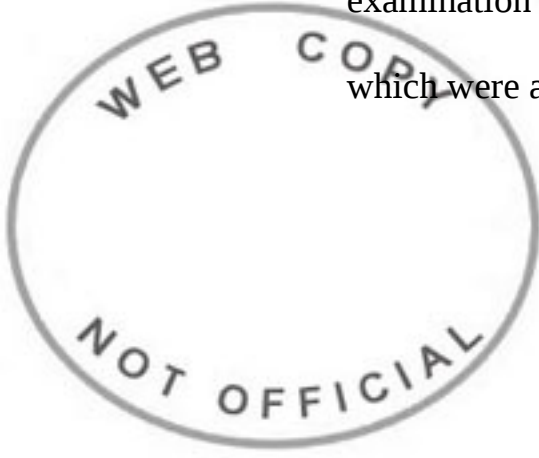
12.

The other aspect which was brought into our attention by the learned counsel for the appellant was that P.W.1, who happened to be very closely related to P.W.8 Subodh Kumar as both P.Ws. 1 and 8 were married to two full sisters, had stated that just after the incident, P.W.8 had gone to the police station and after that the police had come to the place of occurrence at about 7.45 A.M. (P.W.1, paragraph-9) and thereafter many persons also arrived there. When we were perusing the evidence of P.W.9, the first police officer who had arrived at the scene of occurrence, he was telling the trial court in his deposition that he received an information, without disclosing the source from which he received the same, that a man had been murdered in Sonartoli of village Ratanpur and on that basis he came at the place of occurrence and then recorded the statement of P.W.8. P.W.8 should have gone to the police station, does not appear the probability because in spite of being the full brother of the deceased and in spite of having seen the murder and also in spite of the dead body lying still at the place of occurrence what he did was that he had gone to his house to come to the place of occurrence again when the Investigating Officer had arrived there. P.W.8 had stated this fact in paragraph-29. It has been stated by P.W.8 that the police had arrived just after the



commission of the offence and had come to his house also and had taken him and others from there to the place of occurrence. We do not see any reason as to why if the murder had been committed very much in presence of P.W.8 or his father, the informant or anybody else should retreat back to their residential house so as to be brought at the place of occurrence by the police. The other related evidence coming from Kamaldhari Singh @ Bela Singh (P.W.3) that after his son was murdered, he kept sitting near his dead body, as appears in paragraph-8 of P.W.3 also makes the evidence of P.Ws. 3 and 9 a bit unacceptable because their normal conduct would be as was stated by P.W.3, that the family members should keep themselves near the dead body but, as noted above, P.W.8 was stating that they were taken to the place of occurrence by the police from their house and again that the statement of P.W.8 was recorded at his house which fact appears contrary to the record Ext.4. In our opinion, indeed the police had some information, may be from the family members of the deceased and that information had led the police to arrive at the scene of occurrence but, probably the informant and his family members were not knowing as to when the occurrence had taken place and who had committed the crime. As such, they were taking time to give their statement. This was the reason that we were finding the witnesses giving evidence contrary to the medical evidence.

13. The doctor (P.W.11) who held post-mortem examination on the dead body found five ante-mortem injuries on it which were as follows:



(i) Fire arm wound on the left temporal region 1" lateral to the left eye measuring 3/4" x 1/2" x going inside with inverted margin and charring. In the opinion of P.W.11, it was the wound of entry.

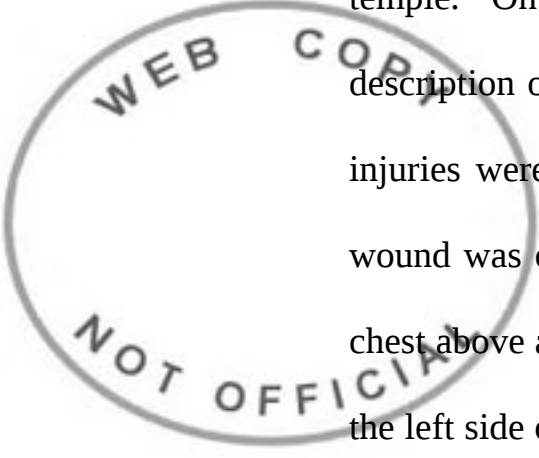
(ii) Fire arm injury on the right temporal area 1/2" above ear in an area of 3/4" x 3/4" x going inside and had its margin everted. It was the wound of exit.

(iii) Fire arm wound on the left side of chest 1/2" above and medial to left nipple measuring 3/4" 1/2" x going inside with inverted margin. It was the wound of entry.

(iv) Fire arm wound on right side of back 1" below the lower angle of scapula measuring 1" x 3/4" x going inside with everted margin. It was the wound of exit.

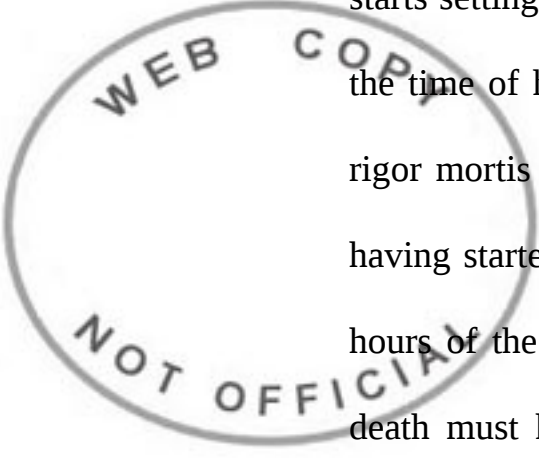
(v) Fire arm superficial lacerated wound on the left forearm dorsal side measuring 2½" x 3/4" x 1/2".

In the opinion of P.W.11, injuries no. 1 and 2 were communicating to each other were and the results of one shot. Likewise, injuries no. 3 and 4 were also communicating to each other and they were also the result of one shot. What appears stated further by the doctor was that the post-mortem had been conducted by him at 10.00 A.M. and he found that the rigor mortis was present all over the body and further, that death in his opinion had occurred within 6 to 12 hours of the holding of the post-mortem examination. The evidence of the prosecution is consistent that the first shot was fired by this appellant Surendra Sah @ Suliya and that hit the deceased on his left arm whereafter the deceased started running away and the second shot was fired by Vijay Poddar which hit him and as a result of that after going up to a few more steps, he fell down when the third accused



Chandan Kumar @ Ganna fired a shot from point blank range into his temple. On consideration of the evidence given by P.W.11 and the description of injuries as per his evidence, what we find is that all the injuries were on the left side of the body of the deceased. The first wound was on the left temporal region, the second on the left side of chest above and medial to the left nipple, whereas the third was also on the left side of dorsum of left arm. These injuries clearly indicated that the person or persons who had fired the three shots were standing to the left of the deceased. As per the prosecution evidence, the second shot which was fired by accused Vijay Poddar should have hit him in the back and that is also the story initially propounded by the informant in his First Information Report when he stated that the second shot which was fired by Vijay Poddar hit his brother in his back. However, what we find is that there was no injury found by the doctor (P.W.11) in the back of the deceased and whatever was found was an exit wound which was corresponding to the wound which was found on the left side of his chest 1/2" above and medial to his left nipple. The evidence of P.W.11 thus, clearly makes the evidence given by the witnesses on manner of occurrence unacceptable.

14. The medical evidence further suggested as we have noted that the post-mortem examination was conducted at 10.00 or 10.20 A.M., i.e., almost after 3½ hours of the incident. The evidence



of the doctor and the recognized medical principle is that rigor mortis starts setting in a dead body after 6 hours of the death of a person. At the time of holding post-mortem examination, P.W.11 had found that rigor mortis had set in all the four limbs and it was complete. After having started setting in from six hours, it starts disappearing after 12 hours of the death of a person. Thus, what appears to us is that the death must have occurred somewhere around 3-4 hours prior to the time which was stated by the prosecution. This important piece of evidence of P.W.11 makes it unacceptable that the deceased had been murdered at 6.30 A.M. on 25.07.2004 as per the claim of the witnesses. These reasons suggest that when the deceased was murdered, no one had seen him being murdered and after finding out the dead body or after having come to know about his murder, his family members had planted a story implicating the appellant and others and that was why that in spite of having the police at the police station, as per their evidence, they were still sitting at their *Darwaza* or house to be brought to the place of occurrence by the police for giving statement.

15. The circumstances, which we have noted from the evidence of the prosecution witnesses, create sufficient doubt in the veracity of the evidence and the prosecution story and we find that the judgment of conviction and order of sentence on that account cannot be sustained.

16. In the result, the appeal succeeds and the same is allowed. The judgment of conviction dated 13.11.2006 and the order of sentence dated 17.11.2006, passed in Sessions Trial No. 100 of 2005, arising out of Begusarai Town P.S. Case No. 221 of 2004, by the learned Presiding Officer of Fast Track Court No. IV, Begusarai are hereby set aside. The solitary appellant Surendra Sah @ Suliya is acquitted of the charges, he had been held guilty of. The appellant is still in custody. He shall be released forthwith, if not wanted in any other case.

(Dharnidhar Jha, J.)

(Gopal Prasad, J.)

Sanjay/N.A.F.R.

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