



one year. However, no separate sentence has been passed under Section 27 of the Arms Act.

3. The prosecution case as set out in the Fardbeyan of Gita Devi (P.W.5), wife of deceased Kailash Paswan, Village-Khanpur, P.S. Sakra, District- Muzaffarpur, recorded by Sri Sudhir Kumar, Sub-Inspector of Sakra P.S., on 11.05.2006, at about 1.00 P.M., at Referral Hospital, Sakra, is that, on 10.05.2006, at about 7.30 P.M., informant along with her daughter, Priyanka Kumari (P.W.3) and son, Ravi Kumar (P.W.6) were sitting at her door. After some time, her husband arrived at her house and was lying at the door. At about 8 P.M., four persons came and called her husband by his name. She saw four villagers, namely, Bhujal Paswan, his two sons, Raj Kumar Paswan and Ashok Paswan and one Ekbali Paswan at her door who asked her husband to accompany them, upon which, she made query as to why they are taking her husband in the night. The four persons said that there is nothing in particular and her husband would return soon. Thereafter, she saw her husband unwilling left her house along with them. The informant, her daughter (P.W.3) and her son (P.W.6) also followed them in the maize field lying in front of her house. At that time, Ramswaroop all of sudden tried to catch the waist of her husband and push him down, but her husband managed to flee. Thereafter, she along with her



daughter and son returned to her house. After sometime, her husband also came to her house and concealed himself. On query, her husband said that appellant, Chaita Paswan, Shatrughan Paswan, Bhujal Paswan along with his two sons, Raj Kumar Paswan and Ashok Paswan, Rabindra Paswan and Kali Paswan wanted to kill him. In the meantime, appellant, Chaita Paswan and Shatrughan Paswan entered in her house forcibly on the point of country made pistol and took him out side the house. While she tried to save him, Ashok Paswan, who was also present with Pistol in his hand, threatened her to kill her husband. As her husband tried to save himself, the appellant, Chaita Paswan shot at him with his pistol, which hit the back side of his head, on account of which, he fell. Her husband was rushed to Referral Hospital, Sakra, for treatment but he died on the way. She further claimed that accused persons killed her husband due to previous enmity.

4. During trial, the prosecution examined altogether 11 witnesses in support of its case, out of which, P.W.9 Kunmud Devi, P.W.10 Md. Sabbir and P.W.11 Javed Ahmad have not supported the prosecution case and declared hostile, whereas P.W. 1 Chandeshwar Paswan and P.W.2 Md. Azaz are not the eye witnesses of the crime, and they reached the place just after the occurrence and saw the accused persons fleeing away. P.W.3



(Priyanka Kumari), the daughter of the deceased, P.W.5 (Gita Devi) the informant of the case, P.W.6 (Ravi Kumar) have claimed to be eye witnesses of the occurrence. Evidence of P.W.4 (Dharmendra Paswan), brother of informant, is hearsay witness. He stated that he received information on telephone about the murder of his brother-in-law by appellant along with other accused persons and he had put his signature on the Fardbeyan of Geeta Devi (P.W.5). P.W.7, Nathuni Paswan, is also hearsay witness and has stated that at the time occurrence, he was at his house and on hearing of sound of firing reached at the place of occurrence but did not see any accused persons fleeing away.

5. P.W.5 Gita Devi, is the informant of the case and the wife of the deceased. She stated that occurrence took place, on 10.05.2006, at about 7.30 P.M. At that time she was sitting at her Varendah and her husband was also sleeping there. In the meantime, Raj Kumar Paswan, Ashok Paswan, Ravindra Paswan and Ramswaroop Paswan came and entered into altercation with her husband. They asked her husband to come out of her house. When her daughter Priyanka Kumari (P.W.3) tried to protest, then accused persons pulled her husband out. At that time, appellant Chaita Paswan came from maize field and shot at temporal region near his ear. One Shatrughan Paswan was also there with the appellant Chaita

Paswan. They raised alarm whereupon all accused persons fled away. Thereafter, her husband was taken for treatment but he died on the way. The Doctor declared him dead when they reached Sakra Hospital. The Daroga Ji too arrived and recorded her Fardbeyan, on which, she put her signature, proved as Ext.1 and the signature of her brother, Dharmendra Paswan in the Fradbeyan was proved as Ext.1/1. The cause of occurrence is land dispute with the accused persons.

In cross-examination, though this witness was examined at length, she remained unshaken.

6. P.W.3 Priyanka Kumari, is the daughter of the informant as well as the deceased. She stated that occurrence took place a year back at about 6-6.30 P.M. in the evening. At that time, she was at her 'Varandah' where her mother, Geeta Devi (P.W.5) and brother, Ravi Kumar (P.W.6) were also present and her father after taking food was lying on a Chowki. In the meantime, Raj Kumar Paswan, Ashok Paswan, Ravindra Paswan and Ekbali Paswan came and asked her father to accompany them. This witness along with her mother and brother followed the accused persons who were taking her father with them. When the accused persons along with her father reached maize field adjacent to her house, appellant Chaita Paswan and Ramswaroop Paswan, emerged from it and



and Ramswaroop Paswan held him out and appellant, Chaita Paswan, shot at him. Thereafter, his father was taken to hospital, but he died on the way.

In cross-examination, he stated that maize field is adjacent to his house. He further stated that accused persons in course of three to four minutes took his father to the maize field and killed him by firing upon him. There is nothing inconsistent in the examination and cross-examination to discredit his evidence.

8. P.W.8, Sudhir Kumar, is the Investigating Officer of the case. On 11.05.2005, he was posted as Officer-In-Charge of Sakra Police Station. He stated that Fardbeyan was recorded at 1 A.M. on the statement of informant, Gita Devi (P.W.5) at Refral Hospital, Sakra and on that very basis, the F.I.R. was registered. He proved his signature on Fardbeyan and formal F.I.R. as Exts. 2 and 3. He also took over the investigation of the instant case, namely, Sakra P.S. Case No. 107 of 2006, dated 11.05.2016 registered under Section 302/34 of the Indian Penal Code and Section 27 of the Arms Act. In course of investigation, he recorded the statement of informant, Gita Devi and the restatement of other witnesses. Thereafter, he prepared the inquest report and incorporated the same in the case diary. He inspected the place of occurrence, which is the house of the informant situated in Village



Khanpur. He stated that the place of occurrence is surrounded by field of Najir Alam on the north and village road on the south. On East is the land of informant and on west is the hut of Kapildeo Paswan. He obtained the postmortem report on 12.05.2005 and arrested the appellant, Chaita Paswan and Shatrughan Paswan and also recorded the statement of the witnesses. He proved the postmortem report prepared by Dr. Mumtaj Ahmad as Ext.4 with objection from the defence.

In cross-examination, he stated that he did not find blood at the place of occurrence. He further stated that he neither seized any material or empty cartridges nor seized any blood or blood stain clothes from the place of occurrence.

**9.** Learned counsel for the appellant submits that there are vital contradictions in the statement of the witnesses. The prosecution has not been able to establish the place of occurrence and also the cause of death, as the Doctor has not been examined in this case.

**10.** On going through the evidence of the witnesses, it is established that deceased, Kailash Paswan was shot at by appellant, Charita Paswan who died. However, the prosecution has failed to establish the cause of death of the deceased as the Doctor has not been examined in this case. Furthermore, the

occurrence took place on the heat of the moment and the deceased sustained only one fire shot injury. As such, we are of the view that conviction of the appellant, under Section 302/34 of the Indian Penal Code, requires to be altered to one under Section 304 Part II of the Indian Penal Code and Section 27 of the Arms Act. We find that appellant Chaita Paswan, has remained in custody for more than ten years and four months, therefore, we modify his sentence to the period already undergone.

**11.** In the result, this appeal is dismissed with the aforesaid modification in the judgment of conviction and order of sentence passed against the appellant.

**(Samarendra Pratap Singh, J)**

**(Rajendra Kumar Mishra, J)**

Bhardwaj/-

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