

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.1113 of 2011

Arising Out of PS.Case No. -261 Year- 2009 Thana -Gopalpur District- BHAGALPUR

1. Rabindra Pandit Son Of Bhola Pandit Resident Of Village - Bhawanipur, P.S. Rangra Chowk, Distt. - Bhagalpur
2. Jhari Yadav @ Akhilesh Yadav Son Of Late Kali Pd. Yadav Resident Of Village - Bhawanipur, P.S. Rangra Chowk, Distt. - Bhagalpur

.... .... Appellant/s

Versus

1. The State Of Bihar

.... .... Respondent/s

with

Criminal Appeal (DB) No. 1185 of 2011

Arising Out of PS.Case No. -261 Year- 2009 Thana -Gopalpur District- BHAGALPUR

1. Dhananjay Mandal @ Sukhra S/O Mahabir Mandal R/O Vill. Masudanpur Baisi, P.S. Rangra ( Gopalpur),Distt. Bhagalpur

.... .... Appellant/s

Versus

1. The State Of Bihar

.... .... Respondent/s

Appearance :  
(In CR. APP (DB) No. 1113 of 2011)

For the Appellant/s : Mr. B. P. Pandey, Sr. Adv.  
Mr. Ranjan Kumar Jha, Adv.  
Mr. Mritunjay Mishra, Adv.

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

(In CR. APP (DB) No. 1185 of 2011)

For the Appellant/s : Mr. Kanhaiya Prasad Singh, Sr. Adv.  
Mr. Radha Mohan Singh, Adv.  
Mr. Dilip Kumar, Adv.

For the Respondent/s : Mr. S. B. Verma, APP

CORAM: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH  
and  
HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH)

Date: 18-05-2016



These two appeals are directed against the judgment of conviction dated 19<sup>th</sup> November, 2011 and the order of sentence dated 21<sup>st</sup> November, 2011 passed by the learned Additional Sessions Judge-I, Naugachia in Sessions Trial Case No. 696 of 2010, whereby the appellants of the aforesaid two appeals have been convicted for the offences punishable under Section 302/34 of the Indian Penal Code and Section 27 of the Arms Act. They have been sentenced to undergo R.I. for life for the offence under Section 302/34 of the Indian Penal Code along with a fine of Rs.20,000/- each and in default of which they have been directed to further undergo S.I. for one year. It has also been ordered that 75% of the amount of fine, if realized, shall be given to the legal heirs of the deceased victim. All the three appellants have further been sentenced to undergo R.I. for five years for the offence under Section 27 of the Arms Act and a fine of Rs.5000/- each and in default of which they have been directed to further undergo S.I. for three months. All the sentences have been directed to run concurrently.

2. The First Information Report (for short 'FIR') of the case was instituted on the basis of fardbeyan of informant Ravi Kumar Mandal. His statement was recorded by the In-charge of Rangra Police Out-post, namely, Ashok Kumar, a Sub-Inspector of Police, on 4<sup>th</sup> July, 2009 at 9.00 p.m. at Naugachia Sadar Hospital. In



his fardbeyan, the informant has stated that on 4<sup>th</sup> July, 2009 at about 6:00 p.m. while he was playing cards with his uncle Gyandeo Patel in front of the house of one Diwakar Mandal, his co-villager Dhananjay Mandal @ Sukhra along with Neeraj Pandit, Jhari Yadav @ Akhilesh Yadav, Rabindra Pandit and 2-3 persons of village Bhawanipur came there. The accused Neeraj Pandit was holding pistols in both his hands. He put one of the pistols at his waist and with the other hand he fired on Gyandeo Patel which hit the latter on the head. Immediately thereafter, the accused Dhananjay Mandal also fired on Gyandeo Patel, uncle of the informant hitting him in the temple region. The informant has also alleged that the other accused persons whom he had not identified by name, but claimed to be able to identify them on sight, also fired from their respective fire arms from all sides. It has been further stated that due to the aforesaid fire arm injuries, his uncle Gyandeo Patel fell on the ground profusely bleeding. He has further stated that on hearing the sound of firing, nearby people rushed there and on seeing them all the accused persons fled away from the place of occurrence. Thereafter, he brought his injured uncle Gyandeo Patel to Naugachia Sadar Hospital for treatment, who, in course of treatment, died in the Hospital. According to the informant, the motive for the occurrence was that the accused persons used to tease and abuse the girls of his village,

which was being objected to by his uncle Gyandeo Patel.

3. On the basis of the above fardbeyan of the informant, Gopalpur P.S. Case No. 261 of 2009 dated 5<sup>th</sup> July, 2009 was registered under Section 302/34 of the Indian Penal Code and Section 27 of the Arms Act against the accused Dhananjay Mandal @ Sukhra, Neeraj Pandit, Jhari Yadav @ Akhilesh Yadav, Rabindra Pandit and some unknown, and investigation was taken up.

4. After completion of the investigation of the case, a report under Section 173(2) of the Code of Criminal Procedure (for short 'CrPC') was submitted before the court of Magistrate, who took cognizance of the offence and after complying with the mandatory provisions as prescribed under Section 207 of the CrPC, the learned Magistrate committed the case to the court of Sessions for trial.

5. On 9<sup>th</sup> July, 2010, each of the four accused persons named in the FIR was charged by the learned trial court in Sessions Trial No. 696 of 2010, as follows:

“Firstly - That you, on or about the 4<sup>th</sup> day of July 2009 at 6 P.M. at Village Masudanpur Baisi P.S. Gopalpur (Rangra) Dist- Bhagalpur committed murder intentionally causing the death of Gyandeo Patel and in furtherance of common intention of all and thereby committed an offence punishable under Section 302/34 of the Indian Penal Code, and

Secondly- That you, on or about the same day at the same place used the country made pistol in contravention of Section 7 of Arms Act and thereby committed an offence punishable under Section 27

Arms Act and I hereby direct that you be tried on the charges.”

6. The accused persons did not plead guilty to the charges and claimed to be tried.

7. Be it noted that later on the trial court realized that the charges against one of the accused, namely, Neeraj Pandit were erroneously framed, as he had already been declared juvenile in conflict with law by an earlier order. Hence, the trial court separated his case from the others vide order dated 22<sup>nd</sup> September, 2010 and proceeded with the trial of the remaining three accused.

8. In order to prove the charges levelled against the accused persons, altogether seven witnesses were examined on behalf of the prosecution. They are P.W.1 Umesh Chandra Patel @ Umesh Prasad Mandal, the father of the deceased, P.W.2 Ravi Kumar Mandal, the informant of the case, P.W.3 Diwakar Mandal, the cousin brother of the deceased, P.W.4 Pooja Kumari, sister of the deceased, P.W.5 Dr. Pankaj Kumar Suman, who conducted autopsy on the body of the deceased, P.W.6 Ashok Kumar, the first Investigating Officer of the case, and P.W.7 Badri Prasad Mandal, the second Investigating Officer of the case. Apart from the oral evidence of the aforesaid witnesses, the signature of the informant on the fardbeyan and the post-mortem report of the deceased were also proved by the

prosecution during trial, which have been marked as Exts.- 1 and 2 respectively.

9. Though no witness was examined on behalf of the defence, the accused persons pleaded their innocence in their statements recorded under Section 313 of the CrPC.

10. After recording the evidence of the witnesses and hearing the arguments advanced on behalf of the parties, the trial court has convicted and sentenced the appellants of the charges framed against them in the manner indicated in the opening paragraph of this judgment.

11. Being aggrieved and dissatisfied with the impugned judgment of conviction and sentence, learned counsel appearing for the respective appellants have submitted that the impugned judgment of conviction and the order of sentence is bad in law and erroneous on facts and is fit to be set aside. The manner, time, place and genesis of occurrence have not been proved beyond reasonable doubt. The initial information given to the police in respect of the offence has deliberately been suppressed and the subsequent fardbeyan, which is on record, is a manipulated one in order to implicate the accused persons, who were on inimical terms from before. They have further submitted that the witnesses examined on behalf of the prosecution

are all related and interested witnesses. Their evidence led before the court is inconsistent and contradictory to each other. They have also submitted that the medical evidence does not support the ocular testimony and even the motive for committing the offence has not been proved beyond reasonable doubt.

12. Per contra, learned counsel appearing for the State have submitted that the fardbeyan was properly recorded by the police and there is no substance in the arguments advanced by the learned counsel for the appellants that the fardbeyan is a manipulated one. They have submitted that P.Ws. 2, 3 and 4 are eye-witnesses to the occurrence and they have fully supported the prosecution case regarding the overt act and participation of the accused persons in the alleged offence. According to them, the autopsy report of the deceased also corroborates the oral testimony of the eye-witnesses of the case. They have further submitted that the Investigating Officer of the case has supported the investigation of the case on all the points. According to them, simply because the witnesses are related to the deceased, they cannot be treated to be interested witnesses and the reliability of their deposition cannot be doubted only because of such relationship.

13. We have given our anxious consideration to the submissions made by Mr. Bibhuti Prasad Pandey, learned Senior

Counsel appearing for the appellants in Cr.Appeal (DB) No.1113 of 2011, Mr. Kanhaiya Prasad Singh, learned Senior Counsel appearing for the appellant in Cr. Appeal (DB) No. 1185 of 2011 and Mr. S.C. Mishra and Mr. S.B.Verma, learned Additional Public Prosecutors appearing for the State. We have also perused the lower court records.

14. To begin with the appreciation of evidence, let us first of all consider the evidence of the witnesses examined during trial first. P.W.2 Ravi Kumar Mandal, the informant of the case has stated in his examination-in-chief that on 4<sup>th</sup> July, 2009 at about 5.00 p.m., when he was playing cards seven persons came from the side of the village and the moment he stood up, the accused Neeraj Pandit put a pistol near his waist and with the other hand he fired at his uncle causing fire arm injury. The accused Dhananjay Mandal also fired immediately thereafter causing injury to his uncle Gyandeo Patel. All others, who had come with them also opened fire indiscriminately and on hearing the sound of firing, the nearby people rushed towards the place of occurrence, where after the accused persons fled away. The injured Gyandeo Patel, who had fallen on the ground, was taken to Naugachia Sadar Hospital where he died in the course of treatment. He has identified his signature on the fardbeyan marked as Ext.-1. He has also stated that the Sub-Inspector of Police had taken his signature on a blank sheet of paper and had stated that he would

reduce the fardbeyan in writing later on.

15. In cross-examination, P.W.2 has admitted that in the Sadar Hospital, first of all, he met with the police at about 7.30 p.m. He admitted that he had not informed the police. According to him, the doctor of the Hospital might have informed the police. He also admitted that firstly the police went near the deceased. At that time, his grand father Umesh Chandra Patel, co-villager, Bhuvneshwar Mandal and several others were present there. He has denied the defence suggestion that no occurrence as alleged had taken place and due to previous enmity the accused persons were implicated falsely in the case.

16. P.W.3 Diwakar Mandal, the cousin brother of the deceased, has also claimed himself to be an eye-witness to the occurrence. He has stated in the examination-in-chief that while he was sitting at his door, the accused Dhananjay Mandal and Neeraj Pandit came near his door and shot at Gyandeo Patel. He has further stated that apart from the aforesaid two accused persons, 5-7 other miscreants had also come along with them covering their faces, who could not be identified.

17. In the cross-examination, P.W.3 has admitted that the names of Rabindra Pandit and Jhari Yadav @ Akhilesh Yadav were



disclosed by him to the Investigating Officer of the case during investigation only on the basis of suspicion. He has admitted that enmity existed from before between the deceased and the accused Dhananjay Mandal and about six months ago a scuffle had taken place between them over the issue of construction of the village road. He also admitted that his statement was not recorded on the date of occurrence rather it was recorded on the next day at about 11.00 a.m. In his further cross-examination, he has narrated a completely different story from what he had stated earlier. He has averred that while he was playing cards with the deceased, 10-12 miscreants being variously armed came all of a sudden covering their faces and they started indiscriminate firing from the respective pistols in their hands. He has stated that out of anxiety he and others ran in helter-skelter to save their life. In that process, unfortunately, Gyandeo Patel sustained gun shot injuries and fell on the ground. At that time, the deceased was wearing *lungi* and *ganji* and the profuse bleeding had not only drenched his clothes, but blood had also fallen on the earth around the place of occurrence. He has stated that almost 50-60 empty cartridges were lying near the place of occurrence. In his further cross-examination, he has stated that information was given by him to the Rangra Police Out-post between 06:15 and 06:30 p.m. on the date of occurrence itself over phone and the police had recorded the

information supplied by him. He has admitted that the injured had reached the Naugachia Sadar Hospital between 06:30 and 06:45 p.m.

18. P.W.4 Pooja Kumari, the sister of the deceased Gyandeo Patel has also claimed herself to be an eye-witness to the occurrence. In her examination-in-chief she has stated that on 4<sup>th</sup> July, 2009 at about 6:00 p.m., she was at the place of occurrence. She saw that the accused Neeraj Pandit fired the first shot, which hit her brother Gyandeo Patel in the head. Immediately thereafter, one Subodh Mandal exhorted Dhananjay Mandal to shoot again, upon which Dhananjay Mandal shot at her brother, which hit him in his temple. She has stated that out of the other miscreants, she could identify Rabindra Pandit, Jhari Yadav, Rabindra Mandal, Shreeddeo Mandal but not the others, who were covering their faces. She has stated that they were all firing in the air indiscriminately, as a result of which none dared go near her brother. She has further stated that she caught hold of the towel of accused Dhananjay Mandal, but he pushed her away, where after she became unconscious.

19. In the cross-examination, she has stated that while she was near the house of one Murlidhar, she heard the first sound of firing. Soon thereafter, she heard the second sound of firing. She claims to have reached near the place of occurrence within two minutes of hearing the sounds of firing. When she reached there, she



saw Dhananjay Mandal, Subodh Mandal, Jhari Yadav, Rabindra Mandal and Shreedeo Mandal were running away from the place of occurrence. She stayed there for about one and a half hours. In her further cross-examination, she has stated that when she heard the sounds of firing, she did not run away rather she proceeded towards the place of occurrence and reached there within two minutes. At that time, her brother was in his senses. However, he was profusely bleeding from the injuries and his clothes were fully drenched with blood and the blood had also fallen on the ground. She admitted that within 5-6 minutes of her arrival at the place her brother became unconscious and died and after witnessing the horrific incident, she also became unconscious.

20. The only other non-official witness examined in this case is P.W.1 Umesh Chandra Patel, father of the deceased. He is a hearsay witness. He has admitted in his cross-examination that he is not a witness to the occurrence and had not given his statement to the police during investigation of the case. He has stated that on 4<sup>th</sup> July, 2009 at about 6.00 p.m. when the occurrence took place, he was busy in the election being held at Naugachia Marwari Dharmshala. He received information on phone that someone has shot his son. On receiving such information, when he was proceeding towards his house, he met his injured son, who was being carried for treatment in



a Jeep. He also accompanied him and went to Naugachia Sadar Hospital, where in course of treatment, his son died. He has stated that he came to know that the act was committed by Dhananjay Mandal, Neeraj Pandit, Akhilesh Yadav @ Jhari Yadav, Rabindra Pandit and three others, who had covered their faces. He has further stated that he came to know from confidential sources that it was one Subodh Mandal who had also shot at his son.

21. As argued by the learned counsel for the appellants, it is true that P.W.1 to P.W.4 are related to each other and are also related to the deceased. However, there is no legal bar in considering the evidence of witnesses being closely related to each other and the deceased. In view of well settled legal position, their evidence has to be carefully scrutinized.

22. Keeping the above well settled law in mind, it is to be seen from the evidence of other witnesses examined during trial as also the other attending circumstances whether or not the aforesaid witnesses to the occurrence are reliable.

23. P.W.5 Dr. Pankaj Kumar Suman, who had conducted the autopsy on the body of the deceased, and the two Investigating Officers, who had investigated the case and submitted the police report were also examined during trial. P.W.5 has given the details of

the injuries, which are as under:

- “(i) Lacerated wound over left forehead above eye-brow of size 1” x ½” x bone deep. Margin inverted, Gun powder mark around wound.
- (ii) Lacerated wound over right temporal region of size about 1 ½” x ½” x bone deep with averted margin.
- (iii) Lacerated wound over left side of lower chest of size about ¼” x ¼” x communicating gun-powder mark around the wound, margin inverted i.e. wound of entry.
- (iv) Lacerated wound over left side back of the chest of size ¾” x ½” x communicating to wound no. (iii), i.e. wound of exit.
- (v) Burn injury mark over left hand dorsally.
- (2) On dissection of above noted injuries clotted blood found underneath the tissue, cranial cavity found full of dark blood, fracture of frontal bone and right temporal bone detected.
- (3) Injury no.(i) is wound of entry  
Injury no.(ii) – wound of exit.
- (4) Thoracic cavity- found full of dark blood; left lung lacerated.
- (5) Abdominal cavity- Found full of dark blood, liver pale, spleen- pale; Laceration detected in lower part of spleen.
- (6) Viscera – Small intestine found gas, stomach- partly digested food and liquid, Large gut (intestine) fecal material and gas. Other- N.A.D.
- (7) Time elapsed since death- within twelve hours.
- (8) Cause of death – In my opinion death occurred due to haemorrhage and shock as a result of above noted injuries caused by fire arm.”

24. In the cross-examination, he has stated that the dead



body was brought at 7:00 a.m. on 5<sup>th</sup> July, 2009 by the Constable Raj Kumar Singh, Chaukidar Subodh Paswan, Umesh Chandra Patel and Bhubneshwar Mandal. He has further stated that all the injuries were caused by fire arm. He has admitted that no bullet or pellet was found during post-mortem examination. According to him, no blackness was found on any injury and no measurement of burn injury was mentioned in respect of the injuries mentioned at serial no.5. He has also admitted that he has not given the probable distance of firing from the object.

25. P.W.7 Badri Prasad Mandal, the second Investigating Officer of the case, is a formal witness. Upon transfer of the first Investigating Officer, he had taken over the investigation of the case. However, no substantial investigation was conducted by him and he has simply stated that he had submitted charge-sheet against the accused persons.

26. P.W.6 Ashok Kumar is the first Investigating Officer of the case. He has stated that in July, 2009, being In-charge of Rangra Police Out-post, he had instituted Gopalpur P.S. Case No. 261 of 2009. He has further stated that he had received information regarding the occurrence at about 7:00 p.m. on 4<sup>th</sup> July, 2009, pursuant to which, he had proceeded to Naugachia Sadar Hospital, where he saw the injured Gyandeo Patel for the first time and the



fardbeyan of the informant was recorded on the same day at 9.00 p.m.. According to him, inquest report was prepared on 5<sup>th</sup> July, 2009 in the morning at 7.00 a.m., where after the body of the deceased was sent for post-mortem examination. He has stated that he recorded the statement of witnesses, inspected the place of occurrence and handed over the charge of investigation pursuant to his transfer to his successor Incharge of the Police outpost P.W.7 Badri Prasad Mandal on 7<sup>th</sup> July, 2009.

27. In the cross-examination, he has admitted that he had made station diary entry before leaving the Police Station. However, he has denied the fact that anyone had informed him on telephone. He has stated that the information received by him was based on rumour. He admitted that though he had seen blood mark at the place of occurrence, the blood stained earth was not collected by him. He has admitted that P.W.3 Diwakar Mandal had not given any information on phone to him regarding the occurrence. He has also denied the fact that the fardbeyan of the informant Ravi Kumar Mandal was not reduced into writing in his presence and his signature was obtained on a blank sheet of paper. He has contradicted the informant by saying that the informant had not stated before him that seven persons had come from the side of the village and the moment he stood up they started firing at the deceased. He has also contradicted P.W.3



Diwakar Mandal by saying that he had not stated before him that while he was playing cards 10-12 miscreants covering their faces suddenly appeared with fire arms in their hands and after surrounding them they resorted to indiscriminate shooting in which the victim Gyandeo Patel sustained gun shot injuries. He has also contradicted P.W.3 Diwakar Mandal that he had not disclosed before him that 50-60 empty cartridges had fallen on the ground and the matter was reported to the Officer-in-Charge of Rangra Police outpost over phone. The Investigating Officer of the case has also contradicted P.W.4 Pooja Kumari by saying that in her statement she had not stated that it was Neeraj Pandit and Dhananjay Mandal, who had shot at her brother Gyandeo Patel and the miscreants, who were about 10-15 in number, were indiscriminately opening fire in the air. He has admitted that he did not see any empty cartridges near the place of occurrence. According to him, there was no positive sign that indiscriminate firing had taken place at the place of occurrence.

28. In view of the aforesaid evidence, the trial court came to the conclusion that the witnesses examined during trial have fully corroborated the prosecution case and ocular testimony of the three eye-witnesses i.e. P.Ws. 2, 3 and 4 has duly been corroborated by the doctor P.W.5, who had conducted the autopsy on the body of the deceased. The trial court has also held that P.W.6, the first

Investigating Officer of the case, has also corroborated the ocular testimony of the witnesses and proved the manner, time and place of occurrence.

29. Keeping the aforesaid evidence in mind, let us examine as to whether the evidence collected during trial were sufficient to hold that the charges levelled against the accused persons stood proved.

30. In this regard, when we look to the evidence of P.W.3 Diwakar Mandal, we find that he has stated that immediately after the alleged occurrence, between 6:15 and 6:30 p.m., he gave telephonic call to the police and informed them, which was also recorded by the police. When this evidence of P.W.3 is compared with the deposition of P.W.6, the Investigating Officer of the case, we find that he has completely denied about receiving any telephonic information from P.W.3. However, he has admitted that on 4<sup>th</sup> July, 2009 at about 7:00 p.m., he had received an information that in the village Masudanpur Baisi a person, who had sustained gun shot injury, was taken to Naugachia Sadar Hospital and on receipt of such information, he proceeded from the Police Station at 7:00 p.m. and by the time he reached Naugachia Sadar Hospital, the victim Gyandeo Patel had already died. Though receipt of any telephonic call by P.W.3 has been denied by the Investigating Officer of the case, he has admitted



that he had received information regarding the alleged occurrence in the Police Station. The said information was certainly not cryptic information. As a matter of fact, it was the first information received by the police regarding the occurrence. Even if the same was not recorded as the FIR, the police ought to have made an entry in this regard in the station diary.

31. The Police Manual and the CrPC mandates that whenever the police receive information regarding any cognizable offence, they must record the same in the station diary. In the present case, the station diary entry has not been produced by the police in the court during trial. The Investigating Officer of the case has failed to throw any light in this regard.

32. Having said so, we are of the opinion that there is no dispute that the earliest report to the police regarding the occurrence has been withheld from the court. Had it been produced, we would have examined whether or not the information received by the police was vague or cryptic.

33. As discussed above, we have seen that the first Investigating Officer (P.W.6) has stated in his deposition that he had received information regarding the occurrence at 7:00 p.m. in the Police Station on 4<sup>th</sup> July, 2009 and, thereafter, he had proceeded



along with police party on a Jeep to the Naugachia Sadar Hospital. In this regard, it would be relevant to note that the informant (P.W.2) has stated that the police met him in the Hospital for the first time at about 7:30 p.m., which would mean that the police reached the Hospital within 30 minutes after leaving the Police outpost, but the fardbeyan was recorded after 90 minutes by the P.W.6. A perusal of Ext.-1, the FIR would demonstrate that the formal FIR was drawn after an unexplained and inordinate delay on 5<sup>th</sup> July, 2009 at 5.30 p.m. If the distance of the Hospital from the Police Station was such that it could be covered by the police within 30 minutes, there is no reason why the FIR could not be instituted promptly on 4<sup>th</sup> July, 2009 itself. It is well settled that prompt and early lodging of FIR gives an assurance regarding its true version. A deliberate delay in lodging the FIR may prove to be fatal.

34. In order to closely scrutinize the evidence, we have also looked into the record of the case. We find that the inquest report was prepared at 7:00 a.m. on 5<sup>th</sup> July, 2009, but the same does not contain the name of any of the accused persons. Here, it is reiterated that the autopsy on the body of the deceased was conducted by the doctor at 7:50 a.m. on 5<sup>th</sup> July, 2009, but the formal FIR was drawn after an inordinate delay at 5:30 p.m. on 5<sup>th</sup> July, 2009. On the facts and in the circumstances of the case, the inordinate delay caused in drawing the



FIR gives an impression that the delay caused in drawing the FIR was deliberate. When the name of the accused persons was already disclosed by the informant to the Investigating Officer of the case at 9:00 p.m. on 4<sup>th</sup> July, 2009, the Investigating Officer, who had prepared the inquest report, ought to have mentioned the name of the accused persons in the relevant column of the inquest report, which was prepared the next morning at 7:00 a.m. We are of the considered opinion that there was no justification for the police to have prepared the inquest report, sent the body for post-mortem examination and obtained the post-mortem report first and instituted the FIR thereafter.

35. We are of the considered view that holding of post-mortem examination is certainly an integral part of investigation which ought to have been done only after institution of the FIR. The manner in which the investigating agency has proceeded in the matter gives a clear impression that the accusations are an after-thought and have been made by giving a coloured version of the event.

36. At this stage, we must note that we are conscious of the fact that in case of a defective investigation, the court has to be circumspect in evaluating the evidence, as it would not be safe to acquit the accused solely on account of a defective investigation, otherwise it would tantamount to playing into the hands of the Investigating Officer, if the investigation is designedly defective.

Thus, in order to satisfy ourselves, we would like to further scrutinize the testimony of the witnesses to the occurrence.

37. In this regard, the next question which comes to our mind is whether or not the occurrence took place in the manner as alleged in the FIR. When we look to the evidence of P.W.2 Ravi Kumar Mandal, the informant of the case, who claims himself to be an eye-witness to the occurrence as also to the evidence of P.W.1, father of the deceased, who is a hearsay witness, and the evidence of P.W.3 Diwakar Mandal, their positive case is that the victim Gyandeo Patel died in course of treatment in the Hospital. When we compare the deposition of the aforesaid three witnesses with the deposition of P.W.4 Pooja Kumari, the sister of the victim Gyandeo Patel, who also claims herself to be an eye-witness, we find apparent contradiction in their stand. P.W.4 has clearly stated in her evidence before the court that her brother Gyandeo Patel died in her presence within a few minutes after the alleged occurrence at the place of occurrence itself, which would clearly mean that the death of Gyandeo Patel did not take place inside the Hospital in course of treatment. The two contradictory versions which emerged during trial from the mouths of the eye-witnesses cannot be reconciled, as they are diametrically opposed to each other. The conflicting versions do create serious doubt regarding the manner of occurrence, as alleged by the

prosecution.

38. Another important issue for consideration in this regard is that the Doctor, who conducted autopsy on the body of the deceased, has not spoken a word regarding any treatment given to the victim in the Sadar Hospital, Naugachia. He has stated that he conducted the post-mortem examination on the body of the deceased on 5<sup>th</sup> July, 2009. The post-mortem report, marked as Ext.-2 during trial, would indicate that the post-mortem examination had commenced at 8:00 a.m. on 5<sup>th</sup> July, 2009. In his deposition, the Doctor has stated that the corpse of the victim was identified by the Constable Raj Kumar Singh and the Chaukidars Subodh Paswan, Umesh Chandra Patel and Bhubneshwar Mandal. We find that the prosecution is completely silent about any treatment given to the victim in the Sadar Hospital, Naugachia. It is not known where the body of the victim was kept during the whole night on 4<sup>th</sup> July, 2009. There is no cogent evidence in this regard. The police constable and the chaukidars, who had identified the corpse of the victim, have been withheld by the prosecution during trial. Their non-examination also creates doubt about the veracity of the prosecution case. As a matter of fact, we are of the opinion that they could have thrown some light about the place from where they had carried the body before the doctor who had conducted post-mortem examination. Furthermore, in



column 3 of the post-mortem report, no name of any relative accompanying the corpse who identified the deceased has been given. We have seen that though the non-official witnesses examined during trial are all related to each other and all of them except P.W.4 Pooja Kumari claim to be present in the Hospital, absence of their names in the relevant column of the post-mortem report is also of significance especially in the background of delayed institution of the FIR. In any view of the matter, the prosecution seems to be more interested in hiding rather than revealing the truth.

39. Coming back to the evidence led regarding the place of occurrence, we find that the witnesses examined on behalf of the prosecution have consistently stated that indiscriminate firing was made by the miscreants at the place of occurrence. P.W.3 Diwakar Mandal has stated that 50-60 empty cartridges were lying on the ground at the place of occurrence. The witnesses have also stated that *lungi* and *ganji* worn by the victim were drenched with blood and due to profuse bleeding there was blood mark on the earth around the place of occurrence. There is no evidence what happened to the *lungi* and *ganji* worn by the victim at the time of occurrence. Neither the Investigating Officer had collected the same and sent them for forensic test nor has he spoken a word regarding those clothes. While deposing in court, the Investigating Officer has clearly stated during



cross-examination that he had neither collected blood stained earth from the place of occurrence nor any positive material was found by him near the place of occurrence to prove that the alleged incident did take place there. He has also admitted that he did not find any empty cartridges in and around the place of occurrence when he inspected the place of occurrence. He has also admitted that the place of occurrence is densely populated, but apart from P.W.3 Diwakar Mandal and the family members of the deceased, he did not record the statement of any other witness.

40. Considering the evidence adduced by the Investigating Officer, we are of the view that the place of occurrence itself becomes doubtful.

41. Having taken note of the delayed institution of the FIR, the quality of investigation, the manner of occurrence and the uncertainty of the place of occurrence, when we look into the evidences, we find that P.W.1 Umesh Chandra Patel was examined for the first time in the court. His statement was never recorded by the police. His evidence is of no help to the prosecution. We further find that the informant P.W.2 Ravi Kumar Mandal has been contradicted by the Investigating Officer in material particulars. We also find that the very presence of P.W.2 becomes doubtful in view of the deposition of P.W.4 Pooja Kumari, who claims herself to be an eye-



witness to the occurrence. P.W.4 Pooja Kumari has clearly stated in her deposition that when her brother was shot by the miscreants, none of his family members was present there, which would clearly mean that at the time of occurrence, neither P.W.2 nor P.W.3 was present at the place of occurrence. We also find that P.Ws.3 and 4 have also been contradicted in material particulars by the Investigating Officer of the case. Furthermore, P.W.3 has given a completely different story while being cross-examined. He has stated that while he was playing cards, about 10-12 miscreants being variously armed covering their faces came to the place of occurrence and resorted to indiscriminate firing in which the victim Gyandeo Patel sustained gun shot injuries. The description of the incident, as narrated by the P.W.3 does not match either with the story narrated in the FIR or the deposition of other witnesses adduced during trial. We further find that though P.W.4 Pooja Kumari claims herself to be an eye-witness, while being cross-examined, she has stated that when the firing took place she was some distance away from the place of occurrence. She heard two sounds of firing one after another and, thereafter, she arrived at the place of occurrence. Thus the very presence of P.W.4 at the time of occurrence becomes doubtful. Her presence has also been denied by the Investigating Officer of the case, who has stated that during investigation of the case P.W.4 had never claimed herself to be

an eye-witness to the occurrence.

42. Having analyzed the evidence of the aforesaid witnesses, we find that there is no consistency in the evidence of the eye witnesses. They have not only contradicted each other, but they have also been contradicted by the Investigating Officer of the case in material particulars.

43. We are of the opinion that when the evidences of P.W.1 to P.W.4 are carefully scrutinized vis-à-vis the evidence of the Investigating Officer (P.W.6) during trial, the prosecution case becomes highly suspect.

44. Regard being had to the tainted investigation, non-examination of independent witnesses, withholding of important witnesses and non-alignment of ocular testimony of the eye-witnesses vis-à-vis evidence of the Investigating Officer of the case, we are of the considered opinion that the prosecution has failed to prove the charges levelled against the appellants beyond reasonable doubt.

45. In that view of the matter, the impugned judgment and order passed by the court below cannot be sustained. Accordingly, the judgment of conviction dated 19<sup>th</sup> November, 2011 and the order of sentence dated 21<sup>st</sup> November, 2011 passed by the learned Additional Sessions Judge-I, Naugachia in Sessions Trial Case No. 696 of 2010,

is set aside. The appellants Rabindra Pandit and Jhari Yadav @ Akhilesh Yadav in Cr. Appeal (DB) No. 1113 of 2011, who are on bail, are discharged from the liabilities of their bail bonds. The appellant Dhananjay Mandal @ Sukhra in Cr. Appeal (DB) No. 1185 of 2011, who is in jail, is directed to be released forthwith, if not required in any other case.

46. The appeals stand allowed.

(Ashwani Kumar Singh, J)

Navaniti Prasad Singh,J. : I agree.

(Navaniti Prasad Singh,J.)

Pradeep/-

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