

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.337 of 2012

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Dharmendra Yadav @ Dhurnendu Yadav @ Dhurnendu Gope S/o Late Bhonu
Yadav Resident of Village- Mosimganj, P.S- Ekangar Sarai, District- Nalanda.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

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Appearance:

For the Appellant/s : Shri Rajeev Kumar, Advocate
For the Informant : Shri Arvind Kumar, Advocate
For the State : Shri Ajay Mishra, APP

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

and

HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH)

Date: 16-10-2017

The present appeal was preferred against the judgment of conviction dated 27.01.2012 and the order of sentence dated 31.01.2012 passed in Sessions Trial No. 754 of 2007 by the learned 1st Additional Sessions Judge, Hilsa (Nalanda), (arising out of Ekangarsarai P.S. Case No. 197 of 2005). By the said judgment the appellant herein has been convicted under Section 302 of the Indian Penal Code and Section 27 of the Arms Act and was sentenced to undergo R.I. for life and pay a fine of Rs. 10,000/- for the conviction under Section 302 of the IPC and in default of payment it was directed that he shall undergo simple imprisonment for one year. The appellant was further sentenced to undergo RI for two years under Section 27 of the Arms Act. Both the sentences were directed to run concurrently.



2. Short facts of the case are that on the basis of the fardbeyan of the informant, namely, Manoj Kumar, Ekangarsarai P.S. Case No. 197 of 2005 was registered under Section 147/148/149302 of the Indian Penal Code and Section 27 of the Arms Act against 25 named persons and 8-10 unknown persons. The appellant was one of the named accused in the aforesaid FIR. It was alleged by the informant, namely Manoj Kumar, in his fardbeyan dated 12.08.2005 recorded at 8:20 A.M. at village Mosimganj, P.S. Ekangarsarai that on 12.08.2005 at about 7:00 A.M. in the morning he had gone to graze his cattle at Takiya in Gouraiya Khanda (vacant field), where the cousin brother of the informant, namely, Saroj kumar had come for cutting the tall grass situated at the field of the High School and was cutting the tall grass at that place. At about 7:15 A.M. in the morning 25-30 people carrying rifle, gun and lathi came at that place and surrounded the deceased Saroj at his field whereafter Rajendra Prasad who was armed with pistol ordered to fire gun shot whereupon the appellant herein fired from his pistol on the chest of the deceased, causing the deceased i.e the brother of the informant to fall down at that place. Thereafter, the other 22 accused persons named in the fardbeyan and 8-10 other unknown persons who were carrying pistol and rifle in their hands started firing indiscriminately and then they went away towards the eastern side. After the accused persons had gone,



the informant went to the field and saw that his cousin brother, namely, Saroj Kumar was lying dead. On hearing the noise of firing, the villagers had come there and at the time of occurrence Ranjan Prasad (P.W.9), Raju Prasad, Biren Prasad, Rajnandan Prasad (P.W. 8) and Madan Prasad (P.W.4), who were working in the adjoining fields, had seen the occurrence. The informant had further stated that the motive was previous enmity. The formal FIR was drawn on 12.08.2005 at 9:30 A.M.

3. The case was investigated by the Police and thereafter the charge sheet was submitted on 27.02.2006 against 12 persons. The cognizance was taken against the accused persons on 18.03.2006.

4. After completion of supply of police papers the case was committed to the Court of Sessions on 05.12.2007, charges were framed on 06.06.2008 under Section 302 and Section 27 of the Arms Act against the appellant and under Section 147/148/302/149 of the Indian Penal Code and Section 27 of the Arms Act against rest of the 11 accused persons.

5. During the course of trial the prosecution produced 10 witnesses to prove their case. The informant of this case i.e. Manoj Kumar was examined as P.W. 10. P.W. 1 Surendra Prasad, P.W. 3 Binda Prasad, P.W. 6 Pramod Yadav, P.W. 8 Rajnandan Prasad and P.W. 9 Ranjan Prasad have been produced by the prosecution and



examined as eye witness to the occurrence. P.W. 2 Krishnandan Prasad and P.W. 4 Madan Prasad are said to be hearsay witnesses to the occurrence. Dr. Ramnandan Prasad Singh who had conducted the postmortem examination on the dead body of the deceased has been examined as P.W. 5 and Pramod Sharma who is the Investigating Officer of this case has been examined as P.W. 7.

6. The defence has also examined one witness, namely, Rajendra Prasad as D.W. 1.

7. Shri Rajeev Kumar, learned counsel for the appellant has argued that the case as projected by the prosecution is apparently doubtful as is evident from the evidence led by the prosecution. It is stated that there is inconsistency in the evidence of the prosecution witnesses as well as the same is full of contradictions. It has been also argued that all the prosecution witnesses have said that the Choukidar, namely Tunu was sent to the police station to inform the Police about the alleged incident of murder of the deceased Saroj Kumar. However, the said witness has been withheld by the prosecution and not examined which also casts a doubt on the story of the prosecution. Learned counsel further argues that though P.W. 1, P.W. 3 and P.W. 8 have stated in their respective depositions that they were the only persons present at the place of occurrence at the time the deceased was inflicted gun shot injury but the other witnesses have deposed as eye witness to



the occurrence and have stated that they were present at the alleged time and place of occurrence, hence the statement of the said witnesses are contradictory to each other and casts a doubt on the veracity and truthfulness of the evidence of the said prosecution witnesses. All the witnesses have stated that the mother, father and sister of the deceased had arrived at the place of occurrence, however, none of them have been produced which leads to the conclusion that the correct version of the incident has been suppressed. It has been further argued by learned counsel for the appellant that though the witnesses have said that dead body was sent to the police station and then to the hospital, however, the Investigating Officer of the present case has said in his evidence that the dead body was sent to the hospital, hence there are major contradictions in the evidence of the prosecution witnesses and apparently the correct version of the incident has been suppressed. It has also been contended by the learned counsel for the appellant that the formal FIR has not been exhibited and that the postmortem report does not show any injury on the chest, as alleged to have been inflicted by gun shot, hence the oral evidence of the prosecution witnesses does not stand corroborated with the medical evidence.

8. Shri Arvind Kumar, learned counsel for the informant has argued that the time of occurrence, place of occurrence and the



motive of occurrence have been established beyond doubt by the evidence of the prosecution witnesses. It has been further contended that each and every witness has supported the fact that the deceased was killed in the field by the appellant herein by inflicting gun shot injury and the prosecution version is fully supported by the medical evidence as well as the inquest report. The learned counsel for the informant has further submitted that there is ample evidence on record to sustain the conviction of the appellant and all the evidence of the prosecution witnesses are sufficient to show that the learned trial judge has rightly passed the judgment of conviction.

9. Shri Ajay Mishra, the learned Additional Public Prosecutor appearing for the State has supported the arguments advanced by the learned counsel for the informant.

10. We have heard the learned counsel for the parties and besides going through the materials on record, have also perused the evidence. At this juncture, it would be apt to deal with the evidence of the prosecution witnesses.

11. P.W. 10 is the informant of the case i.e. Manoj Kumar and he stated in his evidence that the occurrence dates back to five years at about 7:00 in the morning when the occurrence had taken place at Takiya Khanda, Gouraiya. P.W. 10 has stated that 20-30 persons armed with various weapons came there and Saroj Kumar was hit by gun shot fire by the appellant upon being ordered



to do so by Rajendra Prasad and the said Saroj Kumar died at the place of occurrence itself. P.W. 10 has also stated that the occurrence was witnessed by Madan Prasad (P.W. 4), Rajnandan Prasad (P.W.8), Arjun Prasad (not examined) and other persons. P.W. 10 has identified his signature on the fardbeyan which has been marked as Exhibit-5. In paragraph-4 of his cross-examination, P.W. 10 has stated that he has been employed as teacher in Middle School in the year 2007. In paragraph-5 of his cross-examination he has stated that his father are three brothers, namely, Ramchandra, Arjun and his father. Ramchandra has three children, namely, Madan, Sadan and Nand Kumar. P.W. 10 further stated that he has got a brother, namely, Pramod. P.W. 10 has stated that murder of father of the appellant, namely, Monu Yadav had taken place in the year 2002 in which Madan Prasad (P.W.-4) is an accused and the case is going on. P.W. 10 has stated in paragraph-6 of his cross-examination that several cases are going on in between Madan Yadav and the appellant herein. In paragraph-8 of his cross-examination, P.W. 10 has stated that he was present at the place of occurrence from 6:00 in the morning and at that place Madan Prasad, Rajnandan Prasad, Ranjan Prasad, Saryug Yadav, Arvind Prasad, Biren Prasad and Brinda Yadav were grazing their cattle and were scattered all over. In paragraph-9 of his cross-examination, P.W.-10 has stated that the deceased Saroj was present



at the place of occurrence from before he had arrived and when P.W. 10 reached there he saw that Saroj was cutting tall grass and when he had reached there, no person from the village had come there. It has also been stated that Saroj was cutting the grass alone and his father and brother were not present there. P.W. 10 has also stated that when he had come out of his house, he had met the appellant but had no talks with him. P.W. 10 has stated that after one hour of him reaching at the place of occurrence, he saw 20-25 people coming there but he did not tell them anything and also did not run away. P.W. 10 is said to have seen the accused persons coming at that place from a distance of 150 meters and the appellant was at the front and was carrying a pistol. In paragraph-10 of his cross-examination, P.W. 10 has stated that gun shot was fired after one minute of the accused reaching at that place. It has been stated that the deceased Saroj was standing at that time and immediately upon him keeping the load on his head, he was hit by gun shot and Saroj fell at that place itself. P.W. 10 has stated that he was the first one to arrive at that place and thereafter Madan Yadav and others had come and when he had reached near Saroj, the accused persons were fleeing away. P.W. 10 is said to have seen blood oozing out from the back of the deceased Saroj and blood was not coming out from elsewhere. In paragraph no.11 of his cross-examination, P.W. 10 has stated that his uncle Arjun Prasad had informed the



Choukidar and he had gone to the police station after the Choukidar and his uncle had come back after about half an hour. It has also been stated that the Choukidar and his uncle had gone to the police station while the other people had remained back with Saroj. In paragraph-12 of his cross-examination, P.W. 10 has stated that in the police station the statement of the Choukidar was firstly recorded and he had given his statement after one hour of firing of the gun shot. P.W. 10 is said to have signed on the seizure list at the place of occurrence. P.W. 10 had also stated that the Police had arrived after recording the statement but he had been left behind and the Police had reached there 10 minutes earlier. The brother, wife, father of Saroj and others were also present there. The Police had stayed at the place of occurrence for 45 minutes. P.W. 10 has also stated that upon the Police enquiring from him on the second occasion, he had told that the deceased was shot from very close range. He has also stated that though the Police had recovered *Hasua* from the place of occurrence but no seizure list was prepared.

12. P.W. 1 is Surendra Prasad who has stated that the occurrence had taken place on 12.08.2005 at 7:00-7:30 A.M. in the morning when he was near the place of occurrence and at that time 20-25 people were going towards the eastern side after coming out of the village. P.W. 1 has further stated that Saroj Yadav was



coming after cutting the tall grass from Takiya Khanda. Saroj was then surrounded by the accused persons and Rajendra exhorted to kill Saroj whereupon the appellant herein shot Saroj from his pistol in his chest and Saroj fell down. In paragraph-2 of his examination-in-chief, P.W. 1 has stated that the dead body of the deceased Saroj was taken to the police station from where it was taken to Bihar Sharif. The occurrence was witnessed by Manoj, Pramod, Madan, Vrinda, Rajnandan and others. In paragraph-5 of his cross-examination, P.W. 1 had stated that he had left his home at 6:00 in the morning and when he was leaving his home he had not seen Saroj but he had seen him cutting tall grass. He has further stated that he does not remember as to who were present there at that time. He has also stated that when he reached at Takiya Khanda then nobody was present from before and the villagers had come after half an hour. He had seen the accused persons from a distance of 60-70 yards and the appellant was at the front. P.W. 1 has stated that the deceased Saroj was sitting in the khanda and cutting grass. In paragraph-6 of his cross-examination, P.W.-1 has stated that Saroj was going towards the village cutting the grass and his mother was also plucking vegetables in the adjoining field. It has also been stated that when Saroj was proceeding with the grass for about 25-30 yards, the accused persons surrounded him and the accused persons were standing at a distance of two hands. P.W. 1 is said to



have heard the noise of firing of gun shot after 1-2 minutes of Saroj being surrounded by the accused persons and he fell down after being hit by gun shot. Upon hulla, mother of Saroj and others came there. In paragraph-8 of his cross-examination, P.W.1 has stated that when Saroj fell down, he was the first person to reach there and after five minutes Manoj came there. P.W. 1 had seen that blood had fallen on the ground and he had remained there for about half an hour. In paragraph-9 of the cross-examination, P.W. 1 stated that he had not informed the Police but the Police was informed by the Choukidar Tunu and thereafter the Police had come after 2-3 hours and had firstly made enquires from Manoj and then had made enquiries from the mother, wife and brother of Saroj. In paragraph-11 of his cross-examination, P.W. 1 had stated that Madan Prasad is the Mukhiya of the village. P.W. 1 stated that many cases were going on in between Madan Yadav and the appellant herein.

13. P.W. 2 is Krishnandan Prasad and he has stated in his evidence that on 12.08.2005 at about 7:00-8:00 A.M. while he was roaming about he saw 25 people armed with pistol coming from the side of the village. Saroj was there and Rajendra exhorted whereupon the appellant fired from his pistol which hit the chest of Saroj and he died there and then the accused persons went towards the East. The postmortem was conducted at Bihar Sharif. In paragraph-4 of his cross-examination, P.W. 2 has stated that when



he had left his house for taking a stroll, he had not met Saroj. He had neither met Dharmendra or Rajendra or any other person of the village. Pramod was also with P.W. 2 and while they were returning from the pond, he met Arjun, Raju, Ranjan, Madan Prasad, Manoj Kumar, Brinda, Biren but he did not have any talk with them. When P.W. 1 had gone forward he saw 20-25 persons coming from a distance of 100 yards whereupon he and Pramod ran away and reached the village. After sometime he had gone to the place of occurrence and seen that other people were also there and had also seen the dead body of Saroj lying in the field and blood was coming out from his chest. P.W. 1 was at the place of occurrence for one hour during which time the Police had come and had made enquiry firstly from Manoj and in the meantime, mother, wife, bhabhi etc. of Saroj had also arrived there and the Police had made enquiries from them. In paragraph-6 of the cross-examination, he has stated that for the purpose of getting the postmortem conducted, he had also gone along with the dead body.

14. P.W. 3 is Binda Prasad and he has stated in his evidence that the occurrence dates back to five years and the time was 7:00 in the morning. The occurrence had taken place behind the High School. P.W. 3 was cutting grass when from the western side, 30-35 persons variously armed carrying rifle came there. Saroj was also cutting tall grass and when he picked the load of grass on his



head, the accused persons surrounded him whereupon Rajendra exhorted to kill him and then the appellant herein had fired gun shot on Saroj which hit him on his back and he fell down and died there. In paragraph-2, it has been stated that Choukidar had come there and informed the Police at the police station whereafter the Police arrived and took Saroj to the police station and then to Bihar Sharif for postmortem. It has been stated that the occurrence was witnessed by Pramod, Manoj, Rajnandan, Krishna Ballabh. In paragraph-4 of his cross-examination, P.W. 3 has stated that in the year 2002, father of the appellant, namely Monu Yadav was murdered and he came to know about it later on since he was not in the village and he did not know as to who was involved in the murder. In paragraph-5, P.W. 3 has admitted that he knew that Madan Mukhiya was in jail. P.W. 3 has stated in paragraph-6 that he had gone for cutting the grass at 6:00 in the morning and had met Arjun Mukhiya only. In paragraph-7 of his cross-examination, P.W. 3 has stated that after 20 minutes of him cutting the grass, he heard sound of firing whereafter he remained there and kept sitting there for about 15 minutes and in the meantime, nobody had come near him and after 15 minutes he went to his village. P.W. 3 has further stated that after he went to the village he told the villagers about the firing.

15. P.W. 4, namely, Madan Prasad has stated in his



evidence that the incident dates back to 12.08.2015 at about 7:15 in the morning when his cousin brother Saroj had gone to cut grass. At that time 20-25 persons of the village armed with various weapons and pistols came there and surrounded Saroj whereafter Rajendra Yadav ordered the appellant to kill Saroj and then the appellant fired gun shot from his pistol on the chest of Saroj whereupon he fell down and died there. In paragraph-2, it has been stated that the occurrence was witnessed by Manoj Kumar, Ranjan Prasad, Biren Prasad, Rajnandan Prasad, Binda Prasad and others. P.W. 4 has stated that when he reached there he saw that Saroj was dead. P.W. 4 also named the accused who had come there. In paragraph-3, P.W. 4 has stated that the Police had come at the place of occurrence and taken the dead body to the Police Station and had then sent the dead body to Bihar Sharif for postmortem. In paragraph-5 of his cross-examination, P.W.4 has admitted that father of the appellant, namely, Monu Yadav was murdered and in the said case he and Saroj were accused. P.W. 4 has further stated that Manoj Prasad and Ranjan Prasad are his cousin brothers. In paragraph-6 of his cross-examination, P.W. 4 has stated that on the date of occurrence he had left his house at 7:00 in the morning and was empty handed but at that time he had not met either Saroj or his family members as well as he had not met the accused persons. In paragraph-7 of his cross-examination, P.W.4 has stated that when



he had reached Takiya Khanda, other people had come there and then the accused persons had come there with the appellant at the front and he had seen them from a distance of about 50 yards. He has further stated that Saroj was sitting and cutting the grass. He has also stated that the firing took place after five minutes of arrival of the accused persons and the appellant was carrying pistol in his right hand and at the time of firing Saroj was standing and was going towards the western side. He has stated that Saroj had moved only 2 steps when the firing took place whereafter Saroj fell down. In paragraph-8 of his cross-examination, P.W. 4 has admitted that he reached at the place of occurrence after five minutes and before he reached there, Ranjan etc. had already arrived and after he reached, about 10 villagers had arrived there. In paragraph-9 of his cross-examination, P.W.-4 has stated that after 20-25 minutes of hitting of the gun shot, the police had come and at that time the Choukidar of the village as well as 1-2 people were there. The Police had taken the dead body to the police station and he along with Manoj, Ranjan, Arvind and Suryug Prasad had gone with the dead body. They had stayed at the Police Station for one hour and the Police had recorded his statement as well as the statement of Manoj, Ranjan Prasad etc. and thereafter they had gone with the dead body to Bihar Sharif.

16. P.W. 6 is Pramod Yadav and he has stated in his



evidence that the occurrence dates back to 12.08.2005 at about 7:00 in the morning and the occurrence had taken place near Takiya Khanda where he had gone for a stroll. He has stated that when he was coming back he saw 25-30 persons variously armed going from the village towards Takiya Khanda whereafter he came and stood near Takiya Khanda and saw that Rajendra Yadav ordered the appellant to kill Saroj whereupon the appellant fired a gun shot on the chest of the deceased Saroj from his pistol resulting in his death. P.W. 6 had also recognized the accused persons named in the FIR. In paragraph-3, he has stated that Police had come upon information and had taken the dead body to the Police Station from where it was taken to Bihar Sharif for postmortem and the entire occurrence was witnessed by Krishnandan Yadav (P.W. 2), Brinda Yadav, Rajnandan Yadav (P.W.8) and others. In paragraph-4, he stated that the Mukhiya of the village at that time was Madan Yadav. In paragraph-6, it has been stated that at the time he had reached Takiya Khanda, no person was present there and he stayed there up to 8:30 A.M. and thereafter while he was returning to the village, he saw 25-30 people who had formed a mob and were moving as well as Rajendra Yadav and the appellant were in the front. At that time Saroj was on the northern side and he was in a bent position. After 10 minutes, Saroj was shot. At the time when Saroj was shot, he was in a bent position and his face was towards the East. Saroj had



fallen down immediately upon being shot and thereafter his father had come there. In paragraph-8 of his cross-examination, P.W. 6 has stated that the Police was informed by the Choukidar, namely, Tunnu Pandit. After the Police had come at the place of occurrence, it had made enquiries firstly from Manoj and the Police had remained there for 45 minutes and had not taken the signature of any person. In paragraph-9 of his cross-examination, P.W. 6 has stated that he had not told the Police that the appellant had killed Saroj by closely putting the loaded pistol on his chest. In para-9 of his cross-examination, P.W. 6 has denied the suggestion that Saroj was murdered on account of enmity with Madan Yadav.

17. P.W. 8 is Rajnandan Prasad and he has stated that on 12.08.2015 the occurrence had taken place at about 7:15 in the morning. Saroj had gone to cut the grass. P.W. 8 has stated to have seen that the accused persons including the appellant herein were coming from the western side variously armed with lathi, garasa, bhala and pistol and had surrounded Saroj whereupon Rajendra directed to fire gun shot and the appellant had then shot Saroj from his pistol in his chest and he died there. In paragraph-2, P.W. 8 has stated that the occurrence was witnessed by Madan, Manoj, Brinda and others. In paragraph no. 4 of his cross-examination, P.W. 8 has stated that the father of the appellant, namely, Monu Yadav was murdered and in the said case the deceased Saroj, his father and



brother were accused. In paragraph-5 of his cross-examination, P.W. 8 has stated that on the date of occurrence, he had seen Saroj going to the field at about 6:45 A.M. in the morning while he was grazing his cow nearby and he had gone for the said purpose at 6:30 in the morning. In paragraph no. 6, P.W. 8 had stated that Saroj had tied the load and had picked it up on his head. At that time the accused persons had surrounded Saroj in the tall grass field whereafter gun shot was fired from a distance of about five feet and at the time of hitting of the gun shot, load was on the head of Saroj whereupon Saroj fell down and the accused persons went towards the eastern side. P.W. 8 has further stated that he was the first one to reach at the place of occurrence and when he reached there, Saroj had already died. In paragraph no. 7 of his cross-examination, P.W. 8 had stated that the father and mother as well as the family members of Saroj came there after 15 minutes and he had told them about the occurrence. In paragraph-8 of his cross-examination, P.W. 8 has stated that his statement was recorded by the Police after two days.

18. P.W. 9 is Ranjan Prasad who is the brother of the deceased and cousin brother of P.W. 4. P.W. 9 has stated in his evidence that the date of occurrence was 12.08.2005 and the time was about 7:15 in the morning and the place of occurrence is situated towards the east of the village at Gouraiya Khanda. Saroj



was murdered by the appellant herein by pistol by firing gun shot in his chest upon being ordered to do so by Rajendra Prasad and Saroj had died at the place of occurrence. At the time of occurrence, there were about 22 persons who were variously armed. P.W. 9 has stated that the occurrence was witnessed by Arjun, Rajnandan, Brinda etc. In paragraph no. 2, P.W. 9 had stated that the used cartridge (Khokha) was recovered in his presence and seizure list was prepared which he had signed and the same was marked as Exhibit-4. In paragraph no. 4 of his cross-examination, P.W. 9 had stated that Madan is his cousin brother and he is an accused in the occurrence of murder of the father of the appellant, namely Monu Yadav. P.W. 9 has further stated that he and another villager had also gone to the *Khanda* and were working at different places and Saroj was cutting tall grass by sitting in the field. In paragraph no. 5 of his cross-examination, P.W. 9 has stated that after receiving gun shot injury, Saroj died there and they had reached there after two minutes of falling down of Saroj and at that time all the accused persons were present there and after 10 minutes of the occurrence, lot of people had gathered. In paragraph no. 7 of his cross-examination, this witness had stated that he had given information about the occurrence to the Choukidar himself and thereafter the Choukidar had gone to the Police Station whereafter the Police had come at the place of occurrence after half an hour.



19. Dr. Ramanand Prasad Singh has been examined as P.W.-5 and he has stated in his evidence on 12.8.2005 that he was posted as Medical Officer at Sadar Hospital, Bihar Sharif and on that day he had conducted the autopsy on the dead body of the deceased Saroj Prasad and found the following ante mortem injuries on his dead body:-

(i) Lacerated wound with inverted and charred margin ½” diameter x inner deep having multiple tattooing around the wound.

(ii) Lacerated wound with inverted margin 1” diameter over mid sternum x inner deep (wound of exit)

Injury no. 1 communicates with injury no. 2. The left lung is lacerated and fragmented. The left hemi thorax is full of blood and blood clots. The heart is intact both chambers empty. All other viscera intact and pale. The stomach contains 103 of mucoid fluid.

Cause of death-Shock and hemorrhage produced by above mentioned injuries specially injury to lung caused by fire arm substance.

Time elapsed since death-Between 6 to 36 hours.

P.W. 5 has proved the postmortem and the same has been marked as Exhibit-1. Nothing of significance has been extracted from P.W. 5 in his cross-examination.

20. The Investigating Officer, namely, Shri Pramod Sharma has been examined as P.W. 7 and he has stated in his evidence that on 12.08.2005, he was posted as Officer In-Charge of Ekangarsarai Police Station and had conducted the investigation of



the present case. He has stated that the fardbeyan of Manoj Kumar has been written in his hand writing on which Manoj Kumar has put his signature and he had also put his signature which he recognizes and the same has been marked as Exhibit-2. In paragraph-2 of his evidence, P.W. 7 has stated that he had prepared the inquest report which is in his hand writing and bears his signature and the same has been exhibited as Exhibit-3. According to P.W. 7, the place of occurrence is the vacant land adjacent to the Shri Satya Narayan Singh High School, Kundwa, East of village Mosimganj. P.W. 7 had found blood which had fallen at the place of occurrence and had seized the blood stained mud as well as used cartridge (khokha) and prepared the seizure list which is in his writing and he identified the same, which was marked as Exhibit-4. In paragraph no. 3, P.W. 7 has stated that at the place of occurrence, he had taken the statement of the witnesses namely Madan Prasad, Ranjan Prasad, Raju Prasad, Fula Devi, Biren Prasad, Rajnandan Prasad, Arjun Prasad etc. and they had supported the occurrence. Significantly, P.W. 7 has stated that the dead body of the deceased was sent for postmortem to the Bihar Sharif Hospital from there. P.W. 7 had also filed the charge sheet against the accused persons after completion of the investigation. In paragraph no. 4 of his cross-examination, P.W. 7 has stated that he had recorded the fardbeyan at Mosimganj. He was informed by Madan Prasad by telephone on



the same day at 7:30 A.M. and thereafter he had recorded Sanha No. 216 to the effect that the brother of the person giving the information had been killed, having been shot by gun fire. In paragraph no. 5 of his cross-examination, P.W. 7 has stated that he had recorded the time of seizing the articles in the seizure list as 9:30 A.M. P.W. 7 has admitted that he had not sent the blood stained soil and Khokha for examination to the Forensic Laboratory as well as the seized articles had also not been produced in the Court. The time of preparation of the inquest report is 8:30 A.M. P.W. 7 has also stated that blood was found in the vacant field of the school. In paragraph-6 of his cross-examination, P.W. 7 has accepted that he had not prepared the map of the place of occurrence. P.W. 7 has further admitted that during the course of investigation it has come to light that Madan and the deceased are accused in the case pertaining to the murder of the father of the appellant, namely, Monu Yadav. In paragraph-7 of his cross-examination, P.W. 7 has stated that the witness Pramod Yadav had not stated in his statement that the appellant had shot by closely putting the loaded pistol on the chest of the deceased.

21. We have examined the materials on record and find that the evidence of the witnesses examined on behalf of the prosecution are full of contradictions and there is glaring inconsistency as well as discrepancies. It has been deposed by



P.W.1, P.W. 3, P.W. 8 and P.W. 10, respectively, that they were the only persons to have firstly reached at the place of occurrence and nobody else was present there. If it was so that a particular witness was the first one to reach at the place of occurrence at the time of incident, then the said claim should have been made only by one witness but the evidence shows that as many as four witnesses have claimed that they were the first ones to reach the place of occurrence at the time of incident and at that time none else was present there, hence it is apparent that the said witnesses are not speaking the truth and are not natural witnesses but have been tutored. In fact the most important witness i.e. the Choukidar, namely, Tunnu has been withheld by the prosecution, though he could have been the most vital link in deciphering the actual occurrence, since all the witnesses are unanimous that the Choukidar had come at the place of occurrence whereafter he was sent to the Police Station for informing the Police. Non-examination of the Choukidar has caused prejudiced to the defence. Another aspect of the matter is that all the witnesses have stated that immediately after the deceased Saroj was shot, his mother, father and sister had come there, however, the evidence of the said persons has been withheld by the prosecution thus creating a doubt on the case as put forth by the prosecution.

22. The witnesses have said in their evidence that the



dead body of the deceased Saroj was taken to the Police Station and then sent to the hospital at Bihar Sharif for postmortem whereas Investigating Officer i.e. P.W. 7 has stated that the dead body of the deceased was sent to the hospital from the place of occurrence. More significantly, the inquest report has been prepared at the place of occurrence i.e. at the vacant land situated near Shri Satya Narayan Singh High School, hence there was no occasion for the dead body to be taken firstly to the Police Station and then to the hospital at Bihar Sharif, therefore, the place of occurrence also becomes doubtful. Another serious lapse on the part of the prosecution is that the formal FIR has not been exhibited. Another discrepancy/contradiction amongst the evidence of the witnesses is as to whether the deceased Saroj was standing or was in a bent position or was carrying load or was moving towards one side while he was shot. The FIR was recorded at the place of occurrence, however, the prosecution witnesses, to the contrary, have stated that the fardbeyan was recorded at the Police Station though the Investigating Officer has admitted that the fardbeyan was recorded at Mosimganj. Another discrepancy / contradiction is that in fardbeyan, it has been stated by the informant that after Saroj was hit by gun shot fired by the appellant herein, the rest of the accused persons started firing indiscriminately, however, no evidence to the said effect has been adduced during the course of examination of the



prosecution witnesses. Yet another discrepancy is that the Investigating Officer i.e. P.W. 7 in his cross-examination has stated that he was informed by Madan Prasad (P.W. 4) about the incident, however, all the prosecution witnesses have stated that the Police had arrived upon being informed about the incident by the Choukidar. Further, the doctor in the postmortem examination conducted over the dead body of Saroj Prasad, has not stated as to where the wound of entry of the bullet was situated on the dead body of the deceased, resulting in lack of any medical evidence to corroborate the gun shot injury sustained by the deceased on his chest which is a serious lapse on the part of the prosecution leading to non-substantiation of the ocular evidence with the medical evidence. The motive for false implication of the appellant herein and others is also clear i.e. the father of the appellant herein was murdered and in the said case the deceased, his father and brother and the Mukhiya of the village i.e. Madan Prasad (P.W. 4) are accused.

23. Upon consideration of the entire evidence and after going through the materials on record, it is apparent that the alleged place of occurrence is doubtful, the manner of occurrence is also



doubtful and the evidence of all the witnesses are full of contradictions and their credibility has been dented during the course of cross-examination by the defence. Thus, it cannot be said that credible evidence has been brought on record to prove the case beyond all reasonable doubts. Hence, we are of the opinion that the prosecution has not proved the case beyond all reasonable doubt and as such the appellant deserves to be given benefit of doubt.

24. Accordingly, the judgment of conviction and the order of sentence dated 27.01.2012 and 31.01.2012, respectively, passed in Sessions Trial No. 754 of 2007 is hereby set aside and the appeal is allowed.

25. Since the appellant is in custody, he is directed to be released forthwith, if not required in any other case, in view of the fact that he has been acquitted by extending the benefit of doubt.

(Mohit Kumar Shah, J)

Rakesh Kumar J.: I agree.

(Rakesh Kumar, J)

S.Sb/-

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