

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Criminal Appeal (DB) No 101 of 2012**

Arising Out of PS.Case No. -350 Year- 2008 Thana -null District- BEGUSARAI

=====

Chandan Kumar Gandhi @ Ganna S/O Sashi Poddar Resident Of Village/Mohalla-  
Chatti Road, Main Chak, P.S.- Town, District- Begusarai

.... .... Appellant/s

Versus

The State Of Bihar

.... .... Respondent/s

=====

**Appearance :**

For the Appellant/s : M/s Dharendra Nath Jha, Advocate  
Mr Amrit Anunay, Adocate

For the State : Mr S N Prasad, APP

=====

**CORAM: HON'BLE MR JUSTICE KISHORE KUMAR MANDAL**  
**And**  
**HON'BLE MR JUSTICE MADHURESH PRASAD**

**CAV JUDGMENT**

**(Per: HONOURABLE MR JUSTICE KISHORE KUMAR MANDAL)**

**Date: 19-08-2017**

The sole appellant was charged and convicted under Sections 302/34 of Indian Penal Code and Section 27 of the Arms Act by the impugned judgment passed by the trial Court in Sessions Trial No 350 of 2008.

Briefly stated, the prosecution case, as disclosed by the informant (PW 8) in the *Fardbayan* (Exhibit 2) recorded on 25.04.2004 at 8 am, is that he along with his father (PW 1) and his elder brother Binod Kumar Singh (deceased) had gone to their



orchard situated on the north west of Chatti Road in Mohalla – Ratanpur. When they were returning home and reached near the house of Kishore Sonar, the appellant and three other accused persons, all on a sudden, appeared armed with pistol and wrongfully restrained his brother (deceased) who was walking few paces behind them. The accused persons caught hold of the deceased and after a short hot tiff, one of the co-accused fired at him which caused injury in his arm. The deceased tried to flee away. Another co-accused, namely, Vijay Poddar then fired which hit in his back. The deceased even thereafter could walk few paces and then fell down on the brick soling road. Thereafter, the appellant came near him and fired at his temple from a close range which caused his instantaneous death. PW 9, who was posted as the Station House Officer of the Town Police Station, on receiving information about the incident, rushed to the place of occurrence and reached there at about 8 am. By that time, PWs 2, 3, 4, 5 and 6 had already reached there. On the statement made by the informant (PW 8), the *Fardbayan* (Exhibit 2) was recorded at the place of occurrence itself whereafter PW 9 inspected the place of occurrence and seized two empty cartridges of 9 mm bore and one live cartridge (Exhibit 3) from near the dead body of the deceased. Inquest proceeding (Exhibit 7) was also carried out by him in presence of PW 7 and another witness. It further appears from evidence of the SHO (PW 9) that the CD statements of some of the



witnesses, namely, PWs 3, 5 and 6 were recorded immediately at the said place. PW 9 later made over the investigation to PW 10. PW 11, who was then posted at the Sadar Hospital, Begusarai, held autopsy on the deceased on 25.07.2004 at 10.20 am and submitted the post mortem report (Exhibit 6). The trial Court framed the charges and read over to the appellant to which he pleaded not guilty. The defence of the appellant, as reflected from the suggestions given to the witnesses particularly the informant (PW8), is his false implication in the case. A defence was taken that the deceased was having criminal antecedent and had several enemies who might have killed him. Taking this opportunity, the appellant has been falsely implicated.

In order to substantiate the charges, the prosecution examined 11 PWs. PW 1 Kamaldhari Singh is the father of the deceased. He is an attesting witness to the recording of the Fardbayan. He has narrated the ocular account of the prosecution case. PW 2 Kanchan Kumar is not related to the prosecution. He had cow shed close to the place of occurrence. While he was coming on the road from his cattle shed, he saw the appellant and other accused intercepting the deceased and fired on three occasions on him causing his death. His ocular evidence supports the prosecution case on all fours. PWs 3, 4, 5, 6 and 7 are the residents of the nearby places who, on hearing the killing of the deceased, promptly reached the place of occurrence before the arrival of PW 9. Almost all of them have stated



that on reaching the place of occurrence, the informant and his father narrated the prosecution case to them and disclosed the involvement of the appellant in the crime. It may be noted that, out of them, PW 4 is also a witness to the seizure (Exhibit 3) whereas PW 7 is a witness to the death inquest report (Exhibit 4) prepared by PW 9 at the scene of occurrence. PW 8 is the informant being the full brother of the deceased. In his examination-in-chief, he has fully supported the prosecution case. PW 9, as stated above, was the SHO who first reached the place of occurrence and recorded the *Fardbayan* (Exhibit 2). PW 10 was later assigned the Investigation who completed the same and laid the chargesheet. PW 11 Dr D K Rajak had conducted the autopsy on the deceased and submitted the post mortem report (Exhibit 6). He found the following ante mortem injuries present on the deceased:

- (i) Firearm wound on the left temporal area 1" lateral to left eye  $\frac{3}{4}$ " x  $\frac{1}{2}$ " x going inside with inverted margin and charring (wound of entry).
- (ii) Fire arm wound on the right temporal area  $\frac{1}{2}$ " above ear pinna  $\frac{3}{4}$ " x  $\frac{3}{4}$ " x going inside with everted margin (wound of exit)
- (iii) Firearm wound on the left side chest  $\frac{1}{2}$ " above and medial to the left nipple  $\frac{3}{4}$ " x  $\frac{1}{2}$ " x going inside with inverted margin (wound of entry)
- (iv) Firearm wound right side 1" below lower angle of scapula 1" x  $\frac{3}{4}$ " x going inside with everted margin (wound of



exit)

- (v) Firearm superficial lacerated wound on left forearm on dorsal surface 2-1/2" x 3/4" x 1/2"

2 Injury No (i) communicating with injury No (ii) and injury No (iii) communicating with injury No (iv) on probing.

3 On dissection:-

Skull – Fracture of both right and left temporal bone.

Brain matter pale.

Thoracic cavity –

Lungs lacerated left lob. Heart – both chamber empty.

Abdominal cavity – Liver pale. Spleen – congested, stomach lacerated. Kidneys – pale. Bladder – full.

4 Time elapsed since death – 6 to 12 hours.

5 Cause of death:-

In my opinion, death was due to neurogenic and haemorrhagic shock as a result of above mentioned injuries caused by firearms.

Learned trial Court found the exposition of the prosecution case at the trial credible proving the case beyond the pale of doubt and held the appellant guilty.

Heard Mr Akhileshwar Prasad Singh, learned Senior Counsel in support of the appeal and Mr S N Prasad, learned APP for the State. We have carefully perused the evidence on record.

It has been urged by the appellant that a perfunctory investigation was carried by the police inasmuch as the human blood



seen at the place of occurrence was not collected, seized and sent for serological examination. Pyramiding his contention, he also urged that the brick soling road, where the incident had taken place, was lined up by several houses but none of the occupants of those houses was examined by him and produced as a witness at the trial. PW 10 not even cared to visit the orchard from where the informant and the deceased were returning to find out the distance thereof from the place of occurrence. He lastly submits that the manner of occurrence, as spoken by PW 1 (father) and PW 8 (informant), is at sharp variance which throws doubt on the prosecution case. PW 2 has stated about hot discussions between the accused and the deceased for few minutes where after assault was made on the victim. PW 1 and PW 8 have not stated so.

The counsel for the State, conversely, supported the impugned judgment. It is contended that the prosecution case is well proved by the convincing evidence. PWs 2 and 7 are the independent witnesses. PW 2 has supported the prosecution case as an eye witness. The objective findings of the autopsy surgery completely align with the prosecution case.

The submissions of Mr Singh, learned Senior Counsel with regard to the lapses on the part of the Investigating Officer in making proper investigation of the case may be true. He did not pick up blood stained soil from the place of occurrence and sent for its



scientific analysis. This would have firmly established the case of the prosecution. However, it is settled law that omission made on the part of the Investigating Officer, where the prosecution succeeds in proving its case beyond any reasonable doubt by adducing evidence, particularly that of eye witnesses, would not be fatal to the case of the prosecution, for the reason that every discrepancy present in the investigation does not weigh upon the Court to the extent that it necessarily results in the acquittal of the accused unless it is shown that a dishonest or guided investigation was carried out. The aforesaid proposition was propounded by the Apex Court in the case of *Karan Singh –Versus- State of Haryana & Another, (2013) 12 Supreme Court Cases 529*. In the present case, the prosecution case, unfolded in the Fardbayan, finds support from several eye witnesses including PW 1, PW 2 and PW 8 out of whom P.W. 2 is an independent witness. The evidence of PWs 3, 4, 5, 6 and 7, who reached immediately to the place of occurrence, have given full credence to the prosecution case. Most of them are residents of the nearby places. Their presence at the place of occurrence was natural. The defence has not elicited any material contradiction in their evidence even to suggest that these witnesses had an axe to grind against the appellant. The informant (PW 8) and his father (PW 9) had accompanied the deceased. They had immediately revealed the name of the appellant in the commission of the crime and the manner



in which it was committed. The post-mortem report confirms the manner of occurrence.

PW 2 had stated that while moving on the road, he could notice the accused persons, intercepting the deceased, and a brief hot tiff where after the assault was perpetrated in the manner stated by PWs 1 and 8. The counsel for the defence has pointed out that this fact has not been disclosed by PWs 1 and 8. In our considered view, this is a minor omission in narrating the prosecution case by PWs 1 and 8. Every omission is not contradiction unless it completely shakes the evidence. The core of the case has been fully supported by PWs 1, 2 and 8.

Reverting to the contention of the defence counsel that independent witness has not been produced by the prosecution it may be recounted that normally the Court looks for support of the prosecution case from independent source if it finds the evidence of the family members or interested witnesses fallible. Noticeably, the defence has not been able to extract any serious contradiction in the evidence of PWs 1 & 8 creating a doubt on their credibility. There is no legal proposition that the evidence of the family members is an evidence of interested witness. That apart, PW 2 appears to be an independent witness. He has no concern with the family of the deceased. On analyzing his evidence he is found trustworthy. His evidence gives us required assurance to find the guilt of the appellant.



The defence has failed to discredit him in his cross-examination. Law is settled that it is not the quantity of evidence but the quality of evidence which the Court has to look at. The contention of the defence is not held sound.

In the light of the discussions made above, we have no hesitation to hold that the findings of guilt recorded against the appellant by the learned Court below do not warrant any interference.

The appeal is dismissed.

**(Kishore Kumar Mandal, J)**

**M.E.H./-**

**(Madhuresh Prasad, J)**

|                   |            |
|-------------------|------------|
| AFR/NAFR          | NAFR       |
| CAV DATE          | 07.08.2017 |
| Uploading Date    | 22.08.2017 |
| Transmission Date | 22.08.2017 |

