

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.234 of 2012

Arising Out of PS. Case No.-140 Year-1999 Thana- Bakhtiyarpur District- Patna

Kishori Singh, son of Late Butai Singh, resident of village-Manjhali
P.S.Bakhtiyarpur, District-Patna

... .. Appellant

Versus

The State of Bihar

... .. Respondent

Criminal Appeal (DB) No. 112 of 2012

Arising Out of PS. Case No.-140 Year-1999 Thana- Bakhtiyarpur District- Patna

- 1. Ram Jatan Singh, son of Late Deepan Singh,
- 2. Ram Bachan Singh, son of Late Shyamu Singh
- Both residents of village- Meerdahachak, Police Station
-Bakhtiyarpur, District-Patna

... .. Appellants

Versus

The State of Bihar

... .. Respondent

Criminal Appeal (DB) No. 113 of 2012

Arising Out of PS. Case No.-140 Year-1999 Thana- Bakhtiyarpur P.S. District- Patna

- 1. Bhuneshwar Singh, son of Gupt Singh
- 2. Lal Babu Singh,
- 3. Chabindra Singh
- Both sons of Bhajan Singh
- 4. Vijay Singh
- 5. Guhan Singh, both sons of Sohawan Singh
- All are residents of village-Majhauili, P.S. Bakhtiyarpur,
District-Patna

... .. Appellants

Versus

The State of Bihar

... .. Respondent

Appearance :
(In Criminal Appeal (DB) No. 234 of 2012) &
(In Criminal Appeal (DB) No. 113 of 2012)
For the Appellant/s : Mr. Ajay Kumar Thakur, Adv.
Mr. Md.Imteyaz Ahmad, Adv.



Mr. Babita Kumar, Adv.
Mr. Amit Kumar, Adv.
Mr. Shashank Shekhar, Adv.
For the Respondent/s : Mr. Ajay Mishra, A.P.P.
Mr. Rajeev Kumar Singh, Adv.
Mr. Sushant Kumar, Adv.
(In Criminal Appeal (DB) No. 112 of 2012)
For the Appellant/s : Mr. Animesh Kumar Mishra, Amicus Curaie
For the Respondent/s : Mr. Ajay Mishra, A.P.P.
Mr. Rajeev Kumar Singh, Adv.
Mr. Sushant Kumar, Adv.

CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR
and
HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE RAKESH KUMAR)

Date : 03-10-2017

The appellants of all the three appeals were convicted and sentenced by a common Judgment dated 20.01.2012 passed in Sessions Trial No.245 of 2001/ Sessions Trial No.839 of 2003 by Sri Om Prakash, learned Addl. District & Sessions Judge-IV, Barh, Patna and, as such, all the aforesaid appeals were heard together and are being disposed of by a common Judgment.

2. All the appellants have been convicted under Sections 302/149 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for life and in addition thereto they were imposed fine of Rs.5000/-each and in default thereof they were directed to undergo further imprisonment for one year. All the appellants were convicted under Section 148 of the Indian Penal Code and directed to undergo rigorous imprisonment for one year and they have also been convicted under Sections 337/149 of the



Indian Penal Code and directed to undergo simple imprisonment for three months. Only appellant Kishori Singh in Cr.Appeal(DB) No.234 of 2012 has additionally been convicted under Section 27 of the Arms Act and directed to undergo rigorous imprisonment for three years. All the sentences were directed to run concurrently.

3. The appellants have preferred appeals against the Judgment dated 20.01.2012 and order of sentence dated 24.01.2012 passed in Sessions Trial No. 245 of 2001/ Sessions Trial No.839 of 2003 by Sri Om Prakash, learned Addl. District & Sessions Judge-IV, Barh, Patna. The judgment of conviction and sentence has been assailed in the aforesaid appeals, which have been filed under Section 374(2) read with Section 389(1) of the Code of Criminal Procedure, 1973 (hereinafter referred to as “Cr.P.C.”).

4. Short fact of the case is that on 21.08.1999 at 9.00 A.M., the officer incharge of Bakhtiyarpur Police Station recorded fardbeyan of Jairam Singh (P.W.6) near Manjhauli village, Police Station-Bakhtiyarpur, district-Patna. In the fardbeyan, the informant Jairam Singh(P.W.6), which was recorded at the place of occurrence i.e. Manjhauli village near the house of the informant, has disclosed that on the same day, in the morning at about 7.00 A.M., son of his co-villager Guhan Singh was urinating in the drain outside the house of the informant. Thereafter, the elder brother of



the informant, namely, Ram Bachan Singh (deceased) tried to prevent the boy from urinating by saying that there were female members, on which the boy insisted for urinating and due to this reason, some altercation took place. In the meanwhile, Kishori Singh (appellant of Cr.Appeal (DB) No.234 of 2012) carrying a pistol in his hand, Bhuneshwar Singh(appellant no.1), Lalbabu Singh (appellant no.2), Vijay Singh (appellant no.4), Guhan Singh (appellant no.5), Chabindra Singh(appellant no.3) (all appellants of Cr.Appeal(DB) no.113 of 2012), Ram Jatan Singh S/o Late Deepan Singh(appellant no.1) and Ram Bachan Singh (appellant no.2)(both appellants of Cr.Appeal (DB) No.112 of 2012), all carrying deadly weapons, arrived there and dragged his brother to the Gohal(cattle feed-shed) of Guhan Singh and, thereafter, Bhuneshwar Singh exhorted as to what you people are seeing, killed him, whereupon Kishori Singh by his pistol, which he was carrying in his hand, fired on the left eye of Ram Bachan Singh, which hit him and he died at the place of occurrence itself. On hulla raised by the informant, villagers started assembling there. Thereafter, all accused persons started firing as well as bricks-pelting on the building of the informant. In the said occurrence, the informant also received injury of bricks. The informant further stated that accused persons were preventing the informant side from lifting



the dead body and this information was given to the police and, thereafter, the police arrived and recorded his fardbeyan. After recording fardbeyan at 9.00 A.M. a formal F.I.R. vide Bakhtiyarpur P.S. Case No.140 of 1999 was drawn at 10.00 A.M. for the offence under Sections 147,148, 149, 302, 337, 323 of the Indian Penal Code and Section 27 of the Arms Act. As per the informant, the place of occurrence was Gohal(cattle feed shed) of Guhan Singh, village- Manjhauli, Police Station-Bakhtiyarpur, District-Patna. After recording fardbeyan, inquest report in respect of dead body was prepared and the case was investigated. During investigation, the allegation was found true. In the case on 27.11.1999, first chargesheet was submitted against Kishori Singh. Thereafter, on 15.04.2000, first supplementary chargesheet was submitted against Vijay Singh, Lalbabu Singh and Guhan Singh and finally second chargesheet was submitted on 14.07.2002 against rest of the accused persons, namely, Bhuneshwar Singh, Ram Jatan Singh, Ram Bachan Singh and Chabindra Singh. After completing all formalities under Section 207 of the Code of Criminal Procedure, on 01.05.2003 the case was committed to the court of Sessions and subsequently, charges were framed in the year 2004 itself.

5. Since accused persons denied their charges, the prosecution to prove the case examined altogether eight witnesses.



Out of eight prosecution witnesses, (i) P.W.2-Lakshman Singh (son of the deceased), (ii) P.W.3-Ram Ekbal Singh(relative of the deceased), (iii) P.W.4- Malti Devi (wife of the deceased), (iv) P.W.5- Indrajit Singh(son of Ram Briksh Singh and (v) P.W.6-informant Jairam Singh(brother of the deceased) were examined as eye witness to the occurrence, whereas P.W.1-Dr.Nagina Paswan had conducted postmortem examination on the dead body of the deceased and P.W.8-Shyam Kishore Rai, who is an Advocate Clerk, has been examined as a formal witness and P.W.7-Ram Raj was the Investigating Officer of the case. During trial, the postmortem examination report was marked as Ext.1, Fardbeyan was marked as Ext.2, endorsement of the police officer on the fardbeyan was marked as Ext.2/1, Inquest report was marked as Ext.3 and signature of the Sub Inspector of Police, Sri Surendra Prasad Singh on the formal F.I.R. was marked as Ext.4.

6. After placing entire evidence, Sri Ajay Kumar Thakur, learned counsel, assisted by Mr. Md. Imteyaz Ahmad, learned counsel for the appellants in Cr.Appeal (DB) No.234 of 2012 and Cr.Appeal (DB) no.113 of 2012, has argued that it was a fit case for clean acquittal and alternatively he has argued that appellants are entitled to be acquitted by giving the benefit of doubt. He has argued that the prosecution has miserably failed to establish the



place of occurrence. It has been argued that it is consistent case of the prosecution that the occurrence had taken place in the Gohal of Guhan Singh (appellant no.5), however without any explanation, the inquest report was shown to be prepared near the door of one Rambriksh Singh (father of P.W.5-Indrajit Singh). He has argued that it is a peculiar case that the Investigating Officer (P.W.7) during his deposition has stated that he had seen blood mark at the place of occurrence i.e. Gohal, but he had not prepared any seizure list regarding seizure of blood soaked soil nor it was got exhibited, whereas inquest report i.e. Ext.3 categorically states that it was prepared near the door of Ram Briksh Singh. He has argued that if in criminal trial, the prosecution fails to establish the place of occurrence that too in a case, where right from the very beginning, the prosecution stated regarding particular place of occurrence, the accused persons are required to be acquitted by giving benefit of doubt. He has further argued that it was case of the prosecution that after killing the brother of the informant in the Gohal, all accused persons started firing on the building of the informant and started bricks-pelting. The Investigating Officer immediately after arrival at the place of occurrence on inspection had not found any piece of bricks, fired cartridges (Khokha) and any sign of firing on the building. It has also been argued that the prosecution has stated that



after murdering, accused persons started firing and bricks-pelting from the field. The Investigating Officer had not found of trampling of paddy crops. It has further been argued that the entire prosecution case is demolished on examining the post-mortem examination report as well as prosecution evidence. It has been argued that the witnesses have made categorical statements that just before the occurrence, the deceased near his door was cleaning his teeth by *Datwan*, which suggests that deceased had not taken any meal, but during post-mortem examination, in the intestine of the deceased undigested food was found. Sri Thakur, learned counsel for the appellants has argued that finding of undigested food as well as the fact that the doctor, who had conducted post-mortem examination, had opined that death had occurred within 18 hours, it suggests that the occurrence had taken place in the mid-night. He submits that according to the prosecution, occurrence had taken place at 7.00 A.M. and post-mortem examination was done at 3.00 P.M. on the same day and had it been a case of death at 7.00 A.M. on the same day, the doctor would have opined that the occurrence had taken place within 6 to 10 hours or 12 hours, not within 18 hours. It has also been argued that though the informant in his fardbeyan had made categorical statement that after the occurrence, number of co-villagers arrived,



but the prosecution had not examined any independent witnesses, save and except examining close relative of the deceased as eye witness to the occurrence. Sri Thakur, learned counsel for the appellants has also argued that the manner of occurrence, which has been alleged by the prosecution, has not been proved beyond all reasonable doubts and the reason for the occurrence that has been stated by the prosecution that son of Guhan Singh was trying to urinate and was prevented by the deceased, does not inspire confidence on the prosecution case regarding murder of the deceased. On the aforesaid ground, it has been argued that the learned trial Judge without any cogent evidence has convicted the appellants in the case, in which the prosecution has not proved its case beyond reasonable doubt, and has held the appellants guilty and sentenced them. Accordingly, it has been argued that the impugned Judgment of conviction is liable to be set aside.

7. Sri Rajeev Kumar Singh, learned counsel, assisted by Sri Sushant Kumar, learned counsel for the informant has vehemently opposed the appeals. Sri Ajay Mishra, learned Addl. Public Prosecutor has also argued that the learned trial Judge, on the basis of evidence available on record, has rightly passed the Judgment, which requires no interference. Sri Rajeev Kumar Singh, learned counsel for the informant tried to persuade the court that right



from the very beginning, the conduct of the Investigating Officer was doubtful and he was trying to favour the accused persons and, as such, he has not conducted fair and independent investigation. It has been argued that it hardly matter as to whether in the trial any independent witness had come forward or not, but if in a case the witness, even though was close relative of the deceased, has stated the fact regarding the occurrence, the evidence of those witnesses may not be ignored only on the ground that they were close relative of the deceased. He submits that at least in the present case, there are altogether six witnesses, in whose presence occurrence had taken place and they have made specific deposition during trial showing participation/ involvement of all accused persons, who have been convicted by the trial court. Regarding the ground, which has been taken by learned counsel for the appellants that finding of undigested food suggests that the occurrence had taken place earlier from the alleged time of occurrence, it has been argued by Sri Rajeev Kumar Singh, learned counsel for the informant that the deceased was unwell and this was the reason that though he had taken meal in the night, even at the time of occurrence the food was not digested. On this very ground, the prosecution case may not be ignored.



8. In the present case, in Cr. Appeal (DB) No.112 of 2012 repeatedly none appeared on behalf of the appellants and considering the fact that in the case, occurrence had taken place in the year,1999, the Court proposed not to defer the matter and, as such, the Court had requested Sri Animesh Kumar Mishra, learned counsel to assist the court as *Amicus Curiae* and he had agreed to assist the Court. Sri Mishra, learned *Amicus Curaie* has argued that both the appellants of Cr. Appeal (DB) No.112 of 2012 were falsely implicated since litigation in between the appellants and the informant's side was going on and this was the reason that they were falsely implicated. He has referred to paragraph-32 and 33 of the evidence of P.W.7- Ram Raj, the Investigating Officer. He submits that the Investigating Officer has stated that independent witnesses had disclosed that they were falsely implicated in the present case. He has also argued that there is no allegation against the appellants. He submits that even if for the time being it is assumed that appellants were not falsely implicated, fact remains that not even single witness has even whispered regarding participation by the aforesaid appellants in the occurrence. He has argued that the appellants were only made accused since they were watching the occurrence.



9. Besides hearing learned counsel for the parties, we have also perused the entire evidences available on record. Before proceeding it would be necessary to examine what was the informant has stated. During trial, the informant Jairam Singh has been examined as P.W.6. He has stated in his examination-in-chief that on the date of occurrence at about 7.00 in the morning at the place of occurrence, son of Guhan Singh, namely, Fulan Singh was urinating in a drain opposite to the house of the informant. In the meanwhile, Guhan Singh (appellant) arrived there and noticed that son of Guhan Singh, namely, Fulan Singh was urinating, on which Ram Bachan Singh (deceased) tried to stop him by saying that there were female members in the family. However, Guhan Singh insisted that he (Fulan Singh) will urinate at the same place. Thereafter, in between Guhan Singh and Ram Bachan Singh, an altercation started. Guhan Singh raised alarm and called his men, whereupon Kishori Singh (appellant) arrived there carrying a pistol and rest of the accused, namely, Bhuneshwar Singh, Vijay Singh and Lalbabu Singh arrived carrying guns, whereas Ram Bachan, Guhan Singh, Ram Jatan Singh, Chabindra Singh arrived with 'Bhala' and 'Garasa' and Kishori Singh reached with pistol and by dragging brother of the informant carried him to their Gohal. Thereafter, Bhuneshwar Singh directed all the accused



persons to kill him, whereupon Kishori Singh fired on the left eye of Ram Bachan Singh by his pistol and thereafter, Ram Bachan Singh, fell down and died. After the death of Ram Bachan Singh, all eight accused persons started stone pelting as well as firing on the building. The informant also received injury through brick on his left arm. Subsequently, the police arrived and recorded his fardbeyan. This witness (P.W.6) claims to identify all accused persons. In paragraph-10 of his cross-examination, he admits that witness Lakshman Singh (P.W.2) was his nephew, Indrajit Singh(P.W.5) was his cousin brother and Ram Ekbal Singh(P.W.3) was his brother. In paragraph-18 of his cross-examination, he admits that he and his brother Ram Ekbal Singh were arrested on the same day. In paragraph-23 of his cross-examination, he stated that on his building 10-12 shots of firing were made. He further stated in the same paragraph that by the said firing, his brother Ram Bachan died. He further stated in paragraph-26 of his cross-examination that the police had falsely implicated innocent persons in the case of murder of Sanjay Yadav and he accepted that he was accused in the said case, in which occurrence had taken place on the same day.

10. P.W.2- Lakshman Kumar has also stated in similar manner like the informant and stated as to how accused persons



dragged the deceased and Kishori Singh fired and in the said occurrence, he had given the details as to which accused were carrying which weapons. He has admitted that his uncle Jairam Singh (P.W.6) was accused in the murder case of Sanjay Yadav. The said case was numbered as Bakhtiyarpur P.S. Case No.141 of 1999, corresponding to Sessions Trial No.1279/2000, which was pending in the court of A.D.J.IV. P.W.3- Ram Ekbal Singh has also been examined as eye witness. He too has stated like the informant and other eye witnesses. However, in paragraph-2 of his examination-in-chief he has stated that on 21.08.1999 itself one Sanjay Singh son of Rajendra Singh was murdered and in the said case, this witness was also accused. He further stated that in the said case Jairam Singh(P.W.6) was also accused. In paragraph-5 of his cross-examination, he has stated that near the dead body, the police arrived and the police prepared seizure list regarding blood, Khokha etc. He stated that after firing several persons had assembled. In paragraph-10 of his cross-examination, he has stated that only Kishori had fired on the deceased and other accused persons were firing on the house of the informant. About 10-12 shots of firing were made. In paragraph-12 of his cross-examination, he stated that there was sign of firing on the building and he had shown bricks, which were thrown on the house, to the



police officer. P.W.4- Malti Devi (wife of the deceased) too has stated like other eye witnesses and in paragraph-2, she has stated that the occurrence was noticed by Jairam Singh (P.W.6), Ram Ekbal Singh (P.W.3), Indrajit Singh (P.W.5), Lakshman Singh (P.W.2). She has also stated in her cross-examination that accused persons were firing on her house as well as throwing bricks. In paragraph-9 of her cross-examination, she has admitted that the date, on which her husband was killed, in her village one Sanjay Singh was also killed and in the said murder case, her son Lakshman Singh (P.W.2), Devar Ram Ekbal Singh (P.W.3), Indrajit Singh (P.W.5) and her other relatives were made accused. She further stated that at the time of occurrence, 10-12 shots of firing was made. In paragraph-19 of her cross-examination, this witness (P.W.4) has stated that at the time of occurrence, there were paddy crops in the field. P.W.5- Indrajit Singh was cousin brother of deceased Ram Bachan Singh. He too has claimed to be eye witness. He stated like other witnesses. Even he has stated that the deceased was murdered in the Gohal and dead body was lying there. In paragraph-8 of his cross-examination, he accepts that on the same day i.e. 21.08.1999, one Sanjay Kumar was murdered and in the said case Ram Ekbal Singh (P.W.3) and Jairam Singh (P.W.6), who was cousin brother, was also arrested.



11. P.W.1- Dr. Nagina Paswan on 21.08.1999 was posted at Sub Divisional Hospital, Barh and on the same day at 3.00 P.M. he held postmortem examination on the dead body of Ram Bachan Singh and found following injuries:

External-

1. Eye- Rt. Eye close. Lt. Eye-rupture, mouth close-blood with pieces of brain matter coming out from Rt. Ear.

2. Lacerated wound with Lt eye bulb ruptured over let eye eanthus parallel in direction. No charring. (wound of entry)

3. Oval shape lacerated wound over Lt. Ear mixed with pieces of brain matter of parietal and temporal bone.

On dissection: Skull- fracture of Rt. parietal and temporal bone -meninges and brain matter.

Chest and abdomen: lungs- pale, Heart- empty, Stomach- undigested food, liver spleen, kidney were pale, small and large intestine full of gases and faecal matter.

He (P.W.1) in the postmortem examination report, he has reported that death had occurred within 18 hours. He has proved postmortem examination report, which was marked as Ext.1. In his postmortem examination report, he stated that on the person of the deceased, there were two major injuries, which were :

(1) lacerated wound with left eye ball ruptured. Parallel in direction. No charring (would of entry).



**(2) Oval shape lacerated wound over left ear
Ear mixed with pieces of brain matter coming from
from Rt. Ear. Multiple fracture of left parietal and
temporal bone.**

**On dissection- fracture of right parietal and
temporal bone, meninges and brain matter**

12. P.W.8- Shyam Kishore Rai is an Advocate Clerk and he has proved writing of one Officer Incharge, who had written the case diary from paragraph no.58 to 93 of the supplementary case diary. However, he in his cross-examination has accepted that nothing was recorded in his presence.

13. The Investigating Officer, namely, Sri Ram Raj was examined as P.W.7. On 28.08.1999 he was Officer Incharge of Bakhtiyarpur Police Station. He has stated that he had received information on rumour regarding death of one person in Manjhauli village and also injury of one another person. Thereafter, he (P.W.7) went to the place of occurrence and recorded fardbeyan of injured Jairam Singh (P.W.6) and he proved the fardbeyan, which was marked as Ext.2. This witness also proved endorsement of one Sub Inspector of Police on fardbeyan , which was got exhibited and marked as Ext.2/1. He states that after recording fardbeyan, he prepared inquest report, which was witnessed by Pawan Singh and Baldeo Singh and he proved inquest report as Ext.3. Thereafter, he forwarded the fardbeyan to the Police Station. In paragraph-6 of



his examination-in-chief, he has described about the place of occurrence which, according to the Investigating Officer, was Gohal of Guhan Singh in village- Manjhauli, where Ram Bachan Singh was shot dead. The said place of occurrence was about 10-12 feet away on the western side from the house of the informant. He stated that the dead body was found there; meaning thereby that in the Gohal and he stated that it was told that the deceased was shot at the same place. This statement of P.W.7 was objected by the defence counsel since nothing was recorded in the case diary. He further stated that on the eastern side at the distance of about 10-12 feet, there was a drain and, thereafter, there was house of Rambriksh Singh (father of P.W.5). He has also described that in the western side , there was field of paddy crops of Sohawan Singh and in the southern side, there was paddy crops in the field of Nagendra Yadav. He also proved formal F.I.R., which was marked as Ext.4. In paragraph-12, he stated that that he had not recorded statement of son of Guhan Singh. This witness was asked on the point regarding cutting and inserting the name of Guhan Singh after deleting the name of Ram Bachan Singh from the fardbeyan and he accepted that on such correction, there was no initial either of the Investigating Officer or of the informant. He also accepted in paragraph-14 that in the fardbeyan the words “राम



बचन सिंह के बाएँ आँख में गोली मार दी गई ” were added. However, he had neither put any initial nor the informant had put any initial on the fardbeyan. In paragraph-15 of his cross-examination, he had categorically stated that at the time of inspection of place of occurrence, he had not found any sign of throwing bricks on the house of Jairam Singh nor he had found any piece of bricks. He had also not found any sign of firing. He stated that he had found sign of blood , but he did not prepare any seizure list nor it was sent to the Forensic Science Laboratory for its test. In paragraph-16 of his cross-examination, he stated that he had not noticed any foot print on the place of occurrence nor near the field of place of occurrence. He had not even seen that the field was trampled. He accepted that near the house of the informant, there was dense population. In paragraph-21, he stated that in the postmortem report, it was mentioned that undigested food was found in the intestine of the deceased. He further stated that witness Malti Devi (P.W.4) wife of the deceased and witness Bhagia Devi (mother of the deceased) in their statements recorded under Section 161 of the Code of Criminal Procedure has stated that the deceased Ram Bachan Singh at 7.00 in the morning near the door was cleaning his teeth through *Datwan*. He further stated in paragraph-12 of his cross-examination that in paragraph-32 of the case diary, by way



of cutting the words “**not true**”, the word “**true**” was inserted in respect of the fact that the accusation against accused Kishori Singh, Lalbabu Singh, Bhuneshwar Singh, Vijay Singh and Guhan Singh was found untrue; meaning thereby that he accepted that the word “**untrue**” was deleted and in that place the word “**true**” was substituted. He accepted that at the time of deleting the word “untrue” and substituting the word “true”, there was no initial. Attention of the Investigating Officer was drawn to the statement of P.W.2- Lakshman Kumar, which was recorded under Section 161 of the Code of Criminal Procedure and by way of referring to paragraph-6 of the case diary, this witness in paragraph-22 has stated that P.W.2- Lakshman Kumar had not stated that son of Guhan Singh, namely, Fulan Singh was urinating, whereupon Kishori Singh arrived with pistol, Bhuneshwar Singh, Lalbabu Singh and Vijay Singh came with guns. Similarly, in paragraph-23 of his cross-examination, the Investigating Officer has stated that P.W.2-Lakshman Kumar had not stated that Ram Bachan Singh, Ram Jatan Singh and Chabindra Singh had arrived carrying *Garasa*. The Investigating Officer also stated that P.W.2-Lakshman Kumar had not stated that Guhan Singh had caught collar of the deceased and dragged him to the Gohal of Guhan Singh and on the order of Bhuneshwar Singh, Kishori Singh had fired. The



Investigating Officer, in paragraph-24 of his cross-examination, has further stated that P.W.3- Ram Ekbal Singh had not stated in his statement under Section 161 Cr.P.C. that while son of Guhan Singh was urinating, accused Kishori Singh with pistol, Lalbabu Singh, Vijay Singh and Bhuneshwar Singh with guns and Ram Bachan Singh, Ram Jatan Singh, Chabindra Singh and Rohan Singh had come with “*Garasa*” and “*Bhala*”. The Investigating Officer also stated that P.W.3 had not stated that Ram Bachan Singh was forcibly caught by Gohan Singh and Chabindra Singh and dragged him to the Gohal. He further stated that this witness had not stated that accused Bhuneshwar Singh had ordered to fire. The Investigating Officer in paragraph-25 of his cross-examination has stated that P.W.4-Malti Devi had not stated before him that Guhan Singh had called his men, whereupon Kishori Singh came carrying pistol. This witness had also not stated before the Investigating Officer that Bhuneshwar Singh had ordered to fire, whereupon Kishori Singh through his pistol had fired on the left eye of Ram Bachan Singh, rather she had stated that fire was made from a gun, which hit left eye of Ram Bachan Singh. The Investigating Officer in paragraph-26 of his cross-examination has further stated that P.W.5-Indrajit Kumar had not stated before him that at the time of occurrence, he was present at his door, rather he



had stated that he was inside the house. This witness (P.W.5) had also not stated that Fulan Singh started urinating in a drain outside the house. He had not stated that Guhan Singh had raised hulla and called his men. This witness (P.W.5) had also not stated that on call, Kishori Singh carrying pistol, Bhuneshwar Singh, Lalbabu Singh, Vijay Singh carrying gun in their hands arrived, rather this witness had stated that Kishori Singh had come with gun. The Investigating Officer in the same paragraph has stated that P.W.5 had not stated that Ram Bachan Singh, Ram Jatan Singh, Chabindra Singh and Guhan Singh had come with Bhala and Garasa. This witness had also not stated that Guhan Singh had caught collar of Ram Bachan Singh and Bhuneshwar Singh and others had pushed Ram Bachan Singh and carried him to the Gohal. This witness had also not stated that on the order of Bhuneshwar Singh, Kishori Singh had given shot from his pistol on the left eye of Ram Bachan Singh, rather this witness had stated that Kishori Singh had fired from gun, which hit left eye of Ram Bachan Singh. The Investigating Officer has also stated that P.W.5-Indrajit Singh had not stated that after bricks-pelting and firing was made on the house of Ram Bachan Singh, Jairam Singh had received injury on his left arm by bricks. In paragraph-27 of his cross-examination, the Investigating Officer has stated that he had



arrested Jairam Singh and Ram Ekbal Singh in Bakhtiyarpur P.S. Case No.141 of 1999. This witness in paragraph-30 of his cross-examination has stated that the deceased had received fire-arm injury on right and left ear and blood was oozing out. In paragraph-32 of his cross-examination, the Investigating Officer has stated that in paragraph-30 of the case diary during supervision, it was mentioned that the accusation against Chabindra Singh, Ram Jatan Singh, Ram Bachan Singh was found untrue and from the evidence of independent witness, it was clarified that the name of F.I.R. named accused, Chabindra Singh and Ram Jatan Singh was included for their false implication. He further stated in paragraph-33 of his cross-examination that in paragraph-7 of the supplementary case diary the Dy.S.P. had issued instruction to deeply investigate in respect of investigation against Chabindra Singh, Ram Jatan Singh and Bhuneshwar Singh. However, after such instruction, he had not conducted such deep investigation on those points. However, the reason was assigned that he had been transferred. He further stated that on the person of Jairam Singh, no sign of injury was noticed.

14. Besides examining oral evidence, we have also minutely examined the documentary evidence and after going through the inquest report i.e. Ext.3, it is evident that the inquest report was



prepared near the door of Rambriksh Singh(father of P.W.5 -Indrajit Singh). In column-3 of Ext.3 i.e. inquest report, it has been stated that the dead body was found near the door of the house of Rambriksh Singh in village-Manjhauri at 9.15 A.M. on 21.08.1999. The said inquest report was prepared in presence of witness Pawan Singh and Baldeo Singh, who had put their signatures in Column no.8 of the inquest report. In paragraph-5 of the inquest report, it has been stated that fire-arm injury on the left eye was found on the person of the deceased. All the prosecution witnesses, who had claimed to be eye witness, have stated that the deceased was done to death in the Gohal of Guhan Singh. However, surprisingly, the Investigating Officer shows that the dead body was found near the door of Rambriksh Singh. The Investigating Officer in paragraph-6 of his examination-in-chief has stated that the dead body was found in the Gohal of Guhan Singh. Once even after arrival of the Investigating Officer, the dead body was shown to be found in the Gohal of Guhan Singh, it is really difficult to perceive as to what was the reason to show recovery of dead body near the door of Rambriksh Singh, which fact has been incorporated in Ext.3 i.e. inquest report. No plausible explanation has been given by the prosecution regarding such discrepancy. Of course, at the time of argument, Sri Rajeev Kumar



Singh , learned counsel for the informant has tried to persuade the Court that the Investigating Officer had investigated the case not in fair manner, but fact remains that the prosecution had not taken any steps to examine the witnesses, who were witness to the inquest report. If the informant's side had raised any suspicion on the inquest report and recording different place of recovery of dead body, then in normal course the prosecution should have taken steps to examine the witnesses of the inquest report. However, witness to the inquest report were not examined by the prosecution nor any explanation has been given. Regarding the place of occurrence, Sri Thakur, learned counsel for the appellants has rightly raised suspicion due to the reason that no seizure list was prepared regarding blood soaked soil from the place of occurrence. As per the injury, which was found on the person of the deceased i.e. gun injury on the left eye also, oval injury on the left ear and brain material came from the right ear was noticed. In normal course, at the place of occurrence, there would have been huge quantity of blood and in such situation, in normal course, the Investigating Officer would have collected blood as well as soil soaked with blood. It is case of the prosecution that occurrence had taken place at 7.00 A.M. and within two hours 15 minutes i.e. at 9.15 A.M. , inquest report was prepared and the Investigating



Officer had arrived at the place of occurrence and recorded fardbeyan of the informant at 9.00 A.M. i.e. within two hours. In normal course, there would have been availability of blood over the earth as well as brain material, which had come out from the right ear of the deceased. The Investing Officer even during inspection of the place of occurrence has not found such thing, rather in a vague manner, he has stated that he had found blood mark in the Gohal and even thereafter inquest report was prepared from a different place i.e. the door of one Rambriksh Singh(father of P.W.5).

15. It is consistent case of the prosecution that in the occurrence at least 10-12 shots of firing were made, but no cartridges (Khokha) were found either at the place of occurrence or even no sign of pellet/bullet was found on the building of the informant, whereas consistently witnesses have stated that the accused besides throwing bricks were also firing on the building of the informant. Neither any fired pellets /bullets were found at the place of occurrence or even near the house of the informant nor any piece of bricks was found by the Investigating Officer. This fact has categorically been stated by the Investigating Officer in his evidence. This creates serious doubt in the manner of occurrence, as alleged by the prosecution.



16. Sri Thakur, learned counsel for the appellants has also rightly argued that finding of undigested food from the intestine of the deceased also suggests that the occurrence had not taken place at the time i.e. 7.00 A.M. as alleged by the prosecution. The witnesses had categorically stated in their statements recorded under Section 161 Cr.P.C., which has already been referred to herein above in the evidence of the Investigating Officer that the deceased just before the time of occurrence was cleaning his teeth near his door by *Datwan*. This fact is further corroborated on examination of the evidence of Doctor (P.W.1) as well as on examination of postmortem examination report i.e. Ext.1. In the postmortem examination report, the time of death has been recorded as within 18 hours and the doctor has also stated in his deposition that the occurrence had taken place within 18 hours. If we examine the finding of undigested food in the intestine of the deceased as well as the time suggested by the doctor in the postmortem examination report simultaneously, certainly an inference can be drawn that actually the occurrence had not taken place at 7.00 A.M., rather it might have taken place much earlier than the time, as alleged by the prosecution. On examination of postmortem report and evidence of P.W.1-Dr. Nagina Paswan as well as the prosecution evidence, there is serious contradiction in



between the prosecution evidence as well as the medical evidence. Almost all the witnesses, who had claimed to be eye witness to the occurrence, have stated that the deceased was given one shot of firing on the left eye of the deceased. However, the postmortem examination report suggests that there was one fire-arm injury on the left eye and one oval injury was found in the left ear and brain material had come out from the right ear of the deceased. After examining the medical evidence and oral evidence regarding one shot injury the prosecution case comes under the cloud of doubt. Of course, it is true that in case of contradiction in between oral evidence and the medical evidence, reliance is to be placed on oral evidence, but considering other circumstances ; such as finding of undigested food from the intestine of the deceased in a case, in which occurrence had taken place at 7.00 in the morning, preparation of inquest report from a different place than the place, as alleged by the prosecution and non-examination of any of the independent witnesses creates serious doubt on the prosecution case. Learned counsel for the appellants has rightly argued that had it been a case of an occurrence being taken place at 7.00 A.M. in the morning in a densely populated area, in normal course besides close relatives, other witnesses would have come forward to support the case, but in the present case, not even single



independent witness has been examined. It is true that only on the ground of non-examination of independent witness, the prosecution case may not be brushed aside, but in such circumstances, the evidence of relative is required to be examined with precaution. The oral evidence, which is directly in conflict with other evidences, certainly creates serious doubt on their reliability.

17. In view of major contradiction, as has been discussed hereinabove, we are of the opinion that the prosecution had not proved its case beyond all reasonable doubt and, as such, extending the benefit of doubt, the judgment impugned is required to be interfered with.

18. Accordingly, the judgment of conviction and sentence dated 20.01.2012 and 24.01.2012 respectively passed by Sri Om Prakash, learned Addl. District & Sessions Judge – IV, Barh, Patna in Sessions Trial No. 245 of 2001/Sessions Trial No. 839 of 2003 (arising out of Bakhtiyarpur P.S. Case No. 140 of 1999) are, hereby, set aside and all the aforesaid appeals are allowed. During pendency of the aforesaid three appeals, except appellant Kishori Singh of Cr. Appeal (DB) No. 234 of 2012, all other appellants were allowed bail and, as such, in view of setting aside of the



judgment of conviction and sentence, they are discharged from the liability of their bail-bonds.

So far as appellant Kishori Singh is concerned, in view of the fact that he has been acquitted by extending the benefit of doubt, he is directed to be released forthwith, if not required in any other case.

(Rakesh Kumar, J)

(Mohit Kumar Shah, J)

nawalkrs/-

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