

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.373 of 1994

.....

{Against the Judgment of conviction and sentence order dated 22.07.1994 passed by the learned 7th Additional Sessions Judge, Munger, in Sessions Case No.9 of 1993}.

1. Ramdeo Sah, son of Late Gulabi Sah, resident of village-Benigir, Police Station-Muffasil, District-Munger.
2. Gholtu Sah, son of Anandi Sah, resident of village-Chakashim, Police Station-Muffasil, District-Munger.

... .. Appellants.

Versus

The State of Bihar

... .. Respondent.

with

Criminal Appeal (DB) No. 414 of 1994

Bidya Sah, son of Anand Sah, resident of village-Chakashim, Police Station-Muffasil, District-Munger.

... .. Appellant.

Versus

The State of Bihar

... .. Respondent.

with

Criminal Appeal (DB) No. 460 of 1994

Bijay Sah, son of Anandi Sah, resident of village-Chakashim, Police Station-Mufassil, District-Munger.

... .. Appellant.

Versus

The State of Bihar

... .. Respondent.

Appearance :

(In Criminal Appeal (DB) No. 373 of 1994):

For the Appellants : Mr. Deepak Kumar Singh, Advocate.
Mrs. Neelam Kumari, Advocate.
For the State : Mr. Shivesh Chandra Mishra, A.P.P.
For the Informant : Mr. K.N. Choubey, Senior Advocate.
Mr. Prashant Kumar, Advocate.
Mr. Animesh Kumar, Advocate.
Mr. Dineshwar Pandey, Advocate.

(In Criminal Appeal (DB) No. 414 of 1994):



For the Appellant : Mr. Deepak Kumar Singh, Advocate.
Mrs. Neelam Kumari, Advocate.
For the State : Mr. Dilip Kumar Sinha, A.P.P.
For the Informant : Mr. K.N. Choubey, Senior Advocate.
Mr. Prashant Kumar, Advocate.
Mr. Animesh Kumar, Advocate.
Mr. Dineshwar Pandey, Advocate.

(In Criminal Appeal (DB) No. 460 of 1994):

For the Appellant : Mr. Deepak Kumar Singh, Advocate.
Mrs. Neelam Kumari, Advocate.
For the State : Mr. Shivesh Chandra Mishra, A.P.P.
For the Informant : Mr. K.N. Choubey, Senior Advocate.
Mr. Prashant Kumar, Advocate.
Mr. Animesh Kumar, Advocate.
Mr. Dineshwar Pandey, Advocate.

**CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR
SRIVASTAVA
and
HONOURABLE MR. JUSTICE RAJENDRA KUMAR
MISHRA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE HEMANT KUMAR
SRIVASTAVA)**

Date : 04-10-2018

All the above stated three appeals have arisen out of common Judgment of conviction and sentence order dated 22.07.1994 passed by the learned 7th Additional Sessions Judge, Munger, in Sessions Case No.9 of 1993, by which and whereunder he jointly convicted the appellants for the offences punishable under Sections 302, 302 read with Section 149 of the Indian Penal Code and Section 27 of the Arms Act but while awarding the sentence, the learned trial court awarded life imprisonment under Section 302 of the Indian Penal Code and two years rigorous imprisonment for the offence under Section 27 of the Arms Act to the appellant Bijay Sah {in Criminal



Appeal (DB) No.460 of 1994} and, furthermore, sentenced the remaining appellants to undergo rigorous imprisonment for life for the offence punishable under Section 302 read with Section 149 of the Indian Penal Code and further sentenced the appellant Bidya Sah {in Criminal Appeal (DB) No.414 of 1994} to undergo rigorous imprisonment for two years for the offence punishable under Section 27 of the Arms Act.

2. P.W.6 Bijay Singh gave his fardbeyan to S.I. Rajeev Ranjan Dayal of Kotwali Police Station, Munger, at about 11.00 P.M. on 16.06.1991 at Sadar Hospital, Munger, to this effect that on the same day at about 09.30 P.M., he along with his brother Deepak Kumar Singh alias Munna (deceased) and mother (P.W.4) was returning from market and reached in front of the shop of the appellant Bijay Sah. He further claimed that the appellants Bijay Sah, Bidya Sah, Gholtu Sah, Ramdeo Sah and co-accused Bikram Sah encircled him and, at that time, the appellants Bijay Sah and Bidya Sah were carrying pistols, whereas all the above stated remaining persons were carrying stones in their hands. All the above stated persons caught hold his brother Munna and the appellant Bijay Sah shot fire at his brother, as a result of which his brother fell down there and, after that, the appellant Bidya Sah, too, shot one fire at his



brother and the remaining appellants, namely, Gholtu Sah, Ramdeo Sah and the co-accused Bikram Sah started assaulting him by stones. He further claimed that he tried to intervene but the appellant Bijay Sah aimed his pistol towards him upon which he ran towards his village raising alarm but his mother remained there. He further claimed that he along with his father and other villagers returned to the place of the occurrence and having seen him and other villagers, the above stated persons fled away from there. He further claimed that the deceased was rushed to the Sadar Hospital, Munger, where he was declared brought dead by the doctors. P.W.6 further claimed that so many persons had witnessed the occurrence and the reasons behind the alleged occurrence was previous enmity.

3. The fardbeyan of the informant (P.W.6) was forwarded to the Muffasil Police Station, Munger, where Muffasil P.S. Case No.190 of 1991 for the offences punishable under Sections 147, 148, 149, 302 of the Indian Penal Code and Section 27 of the Arms Act was registered and formal F.I.R. was drawn up against the appellants for the above stated offences on 17.06.1991 at 03.30 A.M.

However, P.W.9 took the charge of investigation. He inspected the place of the occurrence, seized blood from the



place of the occurrence and prepared the seizure list of the aforesaid seizure. He kept the blood stained earth, clothes etc. at Malkhana. He recorded the statements of P.W.4 Sanatani Devi, P.W.1 Karu Singh, P.W.7 Rajendra Singh, P.W.2 Dinesh Singh and P.W.5 Md. Islam. He sent the dead body of the deceased for post-mortem examination and received the post-mortem report and after completion of investigation, he submitted the chargesheet against the appellants.

4. The cognizance of the offence was taken and the case was committed to the court of sessions, in usual way and, accordingly, the appellants Bijay Sah and Bidya Sah stood charged jointly for the offences punishable under Section 302 of the Indian Penal Code and Section 27 of the Arms Act, whereas the appellants Bijay Sah, Bidya Sah, Gholtu Sah and Ramdeo Sah stood charged jointly for the offence punishable under Section 302 read with Section 149 of the Indian Penal Code. The appellants denied the charges and claimed to be tried.

5. In order to prove the charges, the prosecution examined, altogether, 9 witnesses and also got exhibited the First Information Report as Ext.A, fardbeyan as Ext.2, signature of P.W.6 on the fardbeyan as Ext.3, post-mortem report as Ext.4, endorsement of the Investigating Officer with signature on



fardbeyan as Ext.5, inquest report as Ext.6 and the dead body challan as Ext.7.

6. The statements of the appellants, under Section 313 of the Code of Criminal Procedure, were recorded in which the appellants claimed their false implication and, furthermore, the appellant Gholtu Sah, specifically, stated that prior to the alleged occurrence, Ashok Singh alias Babloo Singh had shot fire on him when he had demanded cost of betel and, after that, the elder brother of the aforesaid Ashok Singh alias Babloo Singh used to give threatening to him for withdrawal of the case. Furthermore, the appellant Bidya Sah, specifically, claimed in his statement, recorded under Section 313 of the Code of Criminal Procedure, that on the alleged date of the occurrence, he had gone outside and he was not present there. The appellants did not examine any defence witness but got exhibited certain documents in support of their defence.

7. The learned trial court having relied upon the testimony of the prosecution witnesses as well as the documentary evidence adduced on behalf of the prosecution convicted and sentenced the appellants in the manner, as stated above, passing the impugned Judgment of conviction and sentence order against which all the above stated appellants



have preferred these criminal appeals and, accordingly, all the aforesaid criminal appeals were heard together and are being disposed of by this common Judgment.

8. Learned counsel Mr. Deepak Kumar Singh appearing for the appellants challenged the impugned Judgment of conviction and sentence order, arguing that the learned trial court failed to take notice of the infirmities of the prosecution case. He highlighted that P.W.1, P.W.2, P.W.5 and P.W.7 are not named in the fardbeyan of P.W.6 but, even then, in course of trial, they claimed themselves to be eye witnesses of the alleged occurrence. He submitted that the aforesaid prosecution witnesses claimed in course of trial that they were also present on the place of occurrence when the occurrence took place but P.W.6 in his fardbeyan, nowhere, stated about their presence and had the aforesaid witnesses been present over the place of the occurrence, the informant (P.W.6) would have certainly named them in his fardbeyan and non finding of the names of the aforesaid persons in the fardbeyan of P.W.6, creates doubt about their claim and no reliance can safely be placed upon the testimony of the aforesaid witnesses but, even then, the learned trial court relied upon the testimony of the aforesaid witnesses. Learned counsel for the appellants further submits that all the



so-called eye witnesses are related with each others and come under the category of interested witnesses. He further submits that not a single independent witness came forward to support the prosecution case, particularly, in the circumstance, when the Investigating Officer clearly stated in his statement that there were several houses and shops near the place of the occurrence. He further submits that the prosecution witnesses admitted in their depositions that the informant and his family members had inimical terms with the appellants and, therefore, the possibility of false implication of the appellants cannot be ruled out. He further submits that there are so many improbabilities in the prosecution case but the learned trial court failed to take notice of the aforesaid improbabilities. He further submits that the informant and other prosecution witnesses admitted that the deceased was straightway taken to the hospital and while he was being taken to the hospital, he died on his way but, even then, the informant did not give any information to the police, particularly, in the circumstance, when the police station was in the way of the informant. He further submits that P.W.4 admitted in her statement that her clothes were soaked with blood and she handed over her clothes (Saree) to the police but P.W.9 has, nowhere, stated that P.W.4 had given Saree to him



and, moreover, no blood stained Saree has been brought in evidence by the prosecution and, therefore, the aforesaid circumstance creates doubt about the presence of P.W.4 at the place of the occurrence.

Learned counsel for the appellants further submits that the informant has, nowhere, claimed in his fardbeyan that he had identified the appellants in the light of the electric bulb but, in course of trial, not only the informant but the other prosecution witnesses also developed the story and claimed that they had identified the appellants in the light of electric bulb. He further submits that, admittedly, the alleged occurrence took place at about 09.30 P.M. and, at that time, there was complete dark and no source of identification has been disclosed by the informant in his fardbeyan and, therefore, in the aforesaid circumstance, it is very difficult to believe the statements of the so-called prosecution witnesses. He further submits that P.W.6, the informant of this case, claimed in his fardbeyan that the appellant Bijay Sah opened fire on the deceased and having sustained firearm injuries, the deceased fell down and, thereafter, the appellant Bidya Sah also opened fire on the deceased and, therefore, the fardbeyan of P.W.6 goes to show that the deceased sustained two firearm injuries but, in course of



trial, not only P.W.6 but other prosecution witnesses also changed their stand, saying that the deceased had sustained only one firearm injury and the fire made by the appellant Bijay Sah only hit the deceased, whereas the fire made by the appellant Bidya Sah did not hit the deceased. Learned counsel appearing for the appellants further submits that, as a matter of fact, none had seen the actual killing of the deceased and that is the reason, P.W.6 claimed in his fardbeyan that the deceased had sustained two firearm injuries but after post-mortem examination when it came to light that the deceased had sustained only one firearm injury, the prosecution witnesses including P.W.6 changed their stand, saying that the deceased had sustained only one firearm injury. He further submits that the learned trial court completely failed to take notice of the aforesaid fact and committed error in convicting and sentencing the appellants.

9. On the other hand, learned Additional Public Prosecutor assisted by the learned counsel Sri Prashant Kumar, appearing for the informant, supported the impugned Judgment of conviction and sentence order, arguing that it is not necessary to mention each and every details of the prosecution case in fardebeyan and it is well settled principle of law that fardbeyan is not encyclopedia and it is sufficient to give information in



respect of the offence. He further submits that, no doubt, the names of P.W.1, P.W.2, P.W.5 and P.W.7 are not mentioned in the fardbeyan of the informant but the statements of the aforesaid witnesses go to show that they were present on the place of the occurrence and, as a matter of fact, when the appellants encircled the deceased, P.W.6 made an attempt to save the deceased but the appellants threatened him and P.W.6 left the place of the occurrence and ran towards his village and that is the reason, P.W.6 could not see the above stated witnesses and did not name them in his fardbeyan. He submits that, moreover, in **Motiram Padu Joshi and Others Vs. State of Maharashtra**, reported in **AIR 2018 Supreme Court 3245**, the Apex Court of the country at paragraph 14 held that omission as to the names of the assailants or the witnesses may not all the times be fatal to the prosecution, if the F.I.R. is lodged without delay and unless there are indications of fabrication, the court cannot reject the prosecution case as given in the F.I.R. merely because of omission. The Apex Court further held in the aforesaid decision that omission to give the names of the assailants or the names of the witnesses in the F.I.R. is not fatal to the prosecution case.

Learned counsel appearing for the informant further



submits that the deceased was severely injured in the occurrence and the first priority of the informant and other prosecution witnesses was to save the life of the deceased and that is the reason, the informant and other prosecution witnesses took the deceased to the hospital straightway and no information regarding the occurrence was given to the police before taking the deceased to the hospital. He also relied upon a decision reported in **1986 PLJR 688 (Patna)** and **AIR 1977 Supreme Court 1066**. He further submits that the non-mentioning of the source of light in the F.I.R. is also not fatal to the prosecution case because it is not necessary to mention each and every fact in the F.I.R. In support of his contention, he relied upon a decision reported in **(2006) 10 Supreme Court Cases 163**. He further submits that, moreover, it is admitted position that the appellants were well known to the informant and other prosecution witnesses from before and, therefore, in the aforesaid circumstance, it was not difficult for the prosecution witnesses to recognize and identify the appellants, even in the dark night, while they were committing the alleged offence. Learned counsel appearing for the informant relied upon a decision reported in **(1991) 4 Supreme Court Cases 536**. He further submits that it was the duty of the police to send the



blood stained earth and clothes for chemical examination and obtain report thereafter but failure on the part of the police official to send the blood stained earth and clothes and obtain report from the Forensic Science Laboratory is not fatal to the prosecution case. Learned counsel appearing for the informant relied upon a decision reported in **AIR 2004 Supreme Court 210**. He further submits that if the ocular evidence is corroborated by the medical evidence then, in that circumstance, the minor contradictions should be ignored and only because of minor contradictions and omissions, the entire prosecution case cannot be thrown out. He submits that, in the present case, the prosecution clearly established the place of the occurrence, manner of the occurrence and also the participation of the appellants in the alleged crime and, therefore, there is no scope to interfere into the impugned Judgment of conviction and sentence order.

10. Having heard the contentions of both the parties, we went through the records along with the Lower Court Records.

11. P.W.1 Karu Singh, P.W.2 Dinesh Singh, P.W.4 Sanatani Devi, P.W.5 Md. Islam, P.W.6 Bijay Singh and P.W.7 Rajendra Singh claimed themselves to be the eye witnesses of



the alleged occurrence. Admittedly, the name of P.W.1, P.W.2, P.W.5 and P.W.7 does not find place in the fardbeyan of the informant.

12. P.W.1 Karu Singh claims that he along with P.W.2 Dinesh Singh and Rajendra Singh (P.W.7) was returning from the market and they were behind P.W.4 and P.W.6. This witness further claims that he as well as P.W.2 and P.W.7 stopped at a betel shop, whereas P.W.4, P.W.6 and the deceased proceeded ahead. This witness further claims that after sometime, they proceeded and reached near the house of the appellant Bijay Sah. He further claims that as soon as P.W.4, P.W.6 and the deceased reached near the house of the appellant Bijay Sah, the aforesaid persons were encircled by the appellants. He also claims that he had identified the appellants in the light of the electric bulb, which was on a temple. This witness further claims that the appellants Bijay Sah and Bidya Sah were armed with pistols, whereas the remaining appellants were armed with stones. This witness claims that the appellant Bijay Sah shot fire on the neck of the deceased and, thereafter, the appellant Bidya Sah also shot fire but the aforesaid firing did not hit the deceased and, thereafter, the remaining appellants started assaulting the deceased with stones. This witness claims



that P.W.6 made protest but the appellant Bijay Sah asked him and others to move from there, otherwise he would shot at them. This witness claims that he as well as others raised alarm, which attracted several persons. This witness also claims that he as well as others took the deceased to the hospital but the deceased died on his way. This witness admits that the alleged occurrence took place on account of previous enmity.

It is obvious from perusal of the examination-in-chief of this witness that on the alleged date of the occurrence, he along with P.W.2 and P.W.7 were returning from the market and P.W.4, P.W.6 and the deceased were also returning from the market but they were ahead of this witness as well as others. Furthermore, one thing is also clear from perusal of the statement of this witness that the appellant Bijay Sah shot fire, which hit the deceased and the fire of the appellant Bidya Sah did not hit the deceased and, therefore, according to this witness, the deceased had sustained only one firearm injury and the remaining injuries of the deceased were caused by stones. Furthermore, the evidence of this witness goes to show that there was electric bulb burning on a temple and in the light of the aforesaid electric bulb, he identified the appellants and, furthermore, one thing also reflects from the statement of this



witness that there was previous enmity between the deceased as well as the appellants.

The cross examination of P.W.1 goes to show that P.W.7, P.W.2, P.W.4, P.W.6, the deceased as well as this witness are agnates and related with each others. Furthermore, the cross examination of this witness goes to show that P.W.5 is also close to this witness as well as other prosecution witnesses. The attention of this witness was drawn towards his previous statement recorded under Section 161 of the Code of Criminal Procedure and this witness claimed that he had made statement before the police to this effect that the appellant Bijay Sah had shot fire on the neck of the deceased Munna and the appellant Bijay Sah had threatened him and others. This witness further claims that the deceased was taken to the hospital on a rickshaw by P.W.4 and P.W.6, whereas this witness as well as others went to the hospital on foot, following the above stated rickshaw. This witness further states that P.W.4 left the hospital in the same night and went to her home and, similarly, he as well as others also left the hospital and went to their home but on the next morning at about 09.00 A.M., he as well as others returned to the hospital. This witness further states that the police met him at about 03.00 P.M. on the next date.



13. P.W.2 Dinesh Singh also states almost similar facts, which have been stated by P.W.1 in his examination-in-chief. However, P.W.2 claims that he as well as others ran towards village raising alarm and on their alarm, several villagers assembled there and, after that, the deceased was taken to hospital, but he died on his way. This witness also admitted this fact that the alleged occurrence took place on account of previous enmity. This witness claims that while he as well as others were returning from market, P.W.5 was also with them. However, P.W.1 has, nowhere, stated in his examination-in-chief that while he along with P.W.2 and others were returning from the market, P.W.5 was also with them. The attention of P.W.2 was drawn towards his previous statements, recorded under Section 161 of the Code of Criminal Procedure, upon which he claimed that he had made statement before the police to this effect that while he along with P.W.1 and others was returning from market, P.W.5 was also with them. Further attention of this witness was drawn towards his statement regarding the claim of this witness that the appellants had encircled the deceased as well as this fact that the fire of Bidya Sah did not hit the deceased, this witness claimed that he had made statement before the police that the appellants had encircled the deceased



and the firing of the appellant Bidya Sah did not hit the deceased. This witness admitted in his cross-examination that the deceased died near Poorab Sarai, while deceased was being taken to the hospital and Mufasil Thana was at the distance of half kilometer from the place where the deceased died and, similarly, Kotwali police station was at the distance of one kilometer from the above stated place. This witness further admitted that he as well as others took the dead body of the deceased Munna Singh to the hospital, even after crossing the Kotwali police station. This witness claims that when deceased Munna Singh sustained firearm injury, P.W.4 started weeping, after catching the deceased, but the appellants did nothing with P.W.4. However, this witness further claims that the appellants had fired upon others also. This witness also admitted that he is cousin nephew of P.W.6. This witness also stated that only P.W.4 remained on the place of occurrence when deceased Munna Singh sustained injury and the other persons fled away from there. The evidence of this witness reflects that he is agnate of P.W.6 and he was present on the place of occurrence along with P.W.1 and others. Furthermore, the evidence of this witness reflects that the fire made by the appellant Bijay Sah hit the deceased, whereas the fire made by the appellant Bidya Sah



did not hit to any person. The evidence of this witness also goes to show that there was inimical term between the parties.

14. P.W.5 Md. Islam claims that at the time of the alleged occurrence, he was going to his home after closing his shop and reached near the place of the occurrence, where he saw 4-5 persons, who had encircled the deceased. This witness further claims that the aforesaid persons were the appellants and one another person. This witness further claims that he saw P.W.4 and P.W.6, who were also along with the deceased. This witness also claims that P.W.1 and P.W.2 were with him. This witness further claims that the appellant Bijay Sah shot fire on the deceased, which hit on the neck of the deceased, as a result whereof the deceased fell down on the ground and, thereafter, the appellant Bidya Sah opened fire but the aforesaid fire did not hit the deceased and, thereafter, the remaining appellants started assaulting the deceased with stones and bricks. This witness further claims that the appellant Bijay Sah aimed pistol towards P.W.6, who, out of fear, fled towards village. This witness further claims that P.W.4 started weeping, after catching the deceased. This witness also admitted that there was previous litigation and enmity between the parties and this witness also admits that in the north side of the alleged place of



occurrence, there is temple, where a bulb was burning and in the light of the aforesaid bulb, this witness claimed to have seen the appellants. This witness admitted in his cross examination that he along with P.W.6 was made accused in Kotwali P.S. Case No.211 of 1988. This witness denied this fact that he was working as a servant with Dewan Singh. The defence, specifically, suggested this witness that having learnt the contents of the post-mortem report, this witness claimed that fire of the appellant Bidya Sah did not hit the deceased but this witness denied the aforesaid suggestion of defence. This witness also claims that Sagar Singh, Manoj Singh and some others had also witnessed the occurrence.

15. P.W.7 Rajendra Singh also claims that he along with P.W.6, deceased Munna Singh, P.W.4, P.W.1 and P.W.2 was returning from the market and stopped along with P.W.1, P.W.2 and P.W.3 at a betel shop, whereas the deceased, P.W.4 and P.W.6 proceeded ahead. This witness also claims that having taken betel, he along with P.W.1, P.W.2 and P.W.3 proceeded ahead and followed P.W.4 and P.W.6 and saw the occurrence. This witness further claims that the appellant Bijay Sah shot fire on the deceased causing firearm injuries on his neck. He has also claimed that P.W.4 fell on the deceased



Munna and started weeping but the appellant Bidya Sah opened fire and the remaining appellants started assaulting the deceased with bricks and stones. This witness also admitted the previous enmity between the parties. This witness admitted that on the next date of the occurrence, he had made statement before the police. The attention of this witness was drawn towards omissions and improvements in the statement of this witness. However, this witness states that second fire was made on P.W.6 Bijay Singh and, after that, P.W.6 started fleeing from there. This witness further admits that after the occurrence, while he was going to his village, the villagers met him in the way.

16. P.W.4 Sanatani Devi is the mother of the deceased. She claims that she along with the deceased and P.W.6 as well as P.W.1 and P.W.7 were returning to their home and when they reached near the house of Bijay Sah, the alleged occurrence took place. This witness claims that the appellant Bijay Sah opened fire on the deceased from very close range and the firing hit on the neck of the deceased. She further claims that when her son fell on the ground, the appellants Gholtu Sah, Ramdeo Sah and the co-accused Bikram Sah started assaulting him with bricks. This witness further claims that she made attempt to save her son but she was prevented in doing so



from the appellants. This witness also claims that the appellant Bidya Sah also opened fire but the fire of Bidya Sah did not hit to any person. She claims that she had identified the appellants in the light of the electric bulb, which was burning on the temple. She further claims that she was carrying torch with her. She also claims that her Saree, Blouse and Saya were soaked with blood and the same were seized by the police. This witness also claims that torch was also seized by the police. This witness claims that she had made statement before the police that the appellants Gholtu Sah, Ramdeo Sah and the co-accused Bikram Sah assaulted the deceased with bricks and stones and she had also stated that the deceased sustained firearm injury on his neck. This witness also claims she had made statement before the police to this effect that it was appellant Bijay Sah, who shot fire on the deceased. The attention of this witness was drawn towards several improvements and omissions in her statement and, furthermore, this witness admitted that P.W.1 is her brother-in-law. This witness has expressed her inability to say as to whether the appellant Gholtu Sah had filed any case against her son Babloo Singh or not but she frankly admitted that her son Babloo Singh alias Ashok was in jail in connection with a murder case. This witness also admitted that in between



Poorab Sarai and Sadar Hospital, there was Kotwali Police Station as well as Poorab Sarai 'Faudi'

17. P.W.6 Bijay Singh claims that he along with his mother P.W.4 and the deceased Munna Singh was returning from the market. This witness further claims that when they reached near the house of the appellant Bijay Sah, the appellants encircled the deceased Munna and, after that, the appellant Bijay Sah shot fire on the neck of the deceased Munna Singh and, thereafter, the appellant Bidya Sah opened fire but the fire of Bidya Sah did not hit any person and, thereafter, the remaining appellants assaulted the deceased by stones. This witness also states that P.W.4 fell on the body of the deceased Munna. This witness also claims that he identified the appellants in the light of bulb, which was burning on the temple. This witness further claims that when the appellants threatened him, he ran towards his village and, after some time, he returned along with his father, uncle, brother etc. This witness also admitted that there was previous enmity between the deceased as well as the appellants. This witness further admitted that he along with P.W.5 was accused in Kotwali P.S. Case No.211 of 1988 and, similarly, in Mufassil P.S. Case No.329 of 1985, he was accused. Furthermore, he admitted that he as well as his



deceased brother were accused in some other cases also. This witness further admitted that his brother, namely, Ashok was accused in Sessions Case No.311 of 1993, which was in connection with the injury of the appellant Gholtu Sah. The attention of this witness was drawn towards his fardbeyan and previous statement.

18. On careful examination of the evidences of the aforesaid witnesses, it is quite clear that all the aforesaid witnesses claimed to have seen the alleged occurrence and the fardbeyan of P.W.6 was recorded on 16.06.1991, i.e., on the date of the alleged occurrence at about 11.00 P.M. in Sadar Hospital, Munger, but P.W.6, has, nowhere, stated about the presence of P.W.1, P.W.2, P.W.5 and P.W.7 at the time of the alleged occurrence. No doubt, it is not essential that each and every details as well as the name of each and every witnesses should be mentioned in the fardbeyan because fardbeyan is not encyclopedia but, in the present case, the fact is quite different because all the above stated so-called eye witnesses are related with each others and they claimed that they proceeded towards their house from market along with P.W.4, P.W.6 and deceased but, on way, P.W.1, P.W.2 and P.W.7 stopped near the betel shop, whereas P.W.6 along with the deceased and P.W.4 proceeded



towards their home. Therefore, had the P.W.1, P.W.2, P.W.5 and P.W.7 been with P.W.6 at the time of returning from market, P.W.6 would have certainly named the aforesaid persons in his fardbeyan. However, P.W.1, P.W.2, P.W.5 and P.W.7 claimed that they followed P.W.6, P.W.4 and the deceased and saw the occurrence. The aforesaid witnesses also claimed that when the appellants encircled the deceased and shot fire at him, they also tried to save the deceased. In the aforesaid background, it cannot be said that P.W.6 forgot the name of the above stated persons as he was in a panic situation when he was giving his fardbeyan. In our view, since except P.W.5, almost all the so-called eye witnesses are agnates or family members of P.W.6, it is difficult to believe that P.W.6 failed to give the name of those persons in his fardbeyan and, in our view, had P.W.1, P.W.2, P.W.5 and P.W.7 been present over the place of the occurrence and had seen the alleged occurrence, their names would have certainly been given by P.W.6 in his fardbeyan and, therefore, in our view, the presence of P.W.1, P.W.2, P.W.5 and P.W.7 over the place of the occurrence appears to be doubtful and it appears that after the occurrence when several villagers assembled having got information regarding the murder of the deceased, P.W.1, P.W.2, P.W.5 and P.W.7 also reached there.



19. P.W.4 claims that she along with the deceased and P.W.6 was returning from the market and she claims to have seen the occurrence. She further claims that she fell on the body of the deceased when the deceased fell down on the ground having sustained firearm injury. This witness claims that her Saree, Blouse and Petticoat were soaked with blood and the aforesaid clothes were handed over to the police but P.W.9, nowhere, stated that he had seized the blood stained Saree, Blouse and Petticoat of P.W.4, nor the aforesaid blood stained Saree, Blouse and Petticoat were produced before the trial court, in course of trial. P.W.6 claims in his fardbeyan that the appellant Bijay Sah shot fire at the deceased and, thereafter, the appellant Bidya Sah, too, shot fire on the deceased but P.W.8 Dr. Rana Pratap Singh, who did the post-mortem examination on the dead body of the deceased, found only one firearm injury on the person of the deceased and the remaining injuries were said to be caused by hard and blunt substance.

20. No doubt, in course of trial, P.W.6 as well as other so-called eye witnesses claimed that the fire of the appellant Bidya Sah did not hit the deceased but the defence, specifically, suggested P.W.6 and other prosecution witnesses that they developed the above stated story after having learnt the



injury found in the post-mortem examination. Therefore, P.W.6 appears to have developed his statement in respect to the manner of the occurrence, after post-mortem examination of the dead body of the deceased.

21. No doubt, the Apex Court in several decisions have laid down that minor contradictions as well as the minor omissions in fardbeyan as well as in the statement of the prosecution witnesses do not discard the entire prosecution case but, in the present case, P.W.6 has improved his case regarding the manner of occurrence, which is not a minor omission or minor improvement because the aforesaid improvement and omission go to the root of the prosecution case

22. P.W.6 and other so-called eye witnesses claimed that except the appellant Bijay Sah and Bidya Sah, the other appellants assaulted the deceased with bricks and stones and P.W.8 found three injuries on the person of the deceased, said to be caused by hard and blunt substance.

23. P.W.9, who happens to be the Investigating Officer of the case, claims that he visited the place of the occurrence in the next morning of the alleged occurrence and seized the blood from the place of the occurrence but P.W.9 did not find any blood stained bricks and blood stained stones on



the place of the occurrence. Had the bricks and stones been used in assaulting the deceased, the aforesaid bricks and stones would have certainly been found by P.W.9 on the place of the occurrence because in the very next morning of the alleged occurrence, P.W.9 inspected the place of the occurrence and seized the blood from the place of the occurrence. However, P.W.9 also admitted that P.W.6 and other prosecution witnesses improved their statements in course of trial.

24. It is an admitted position that there was previous enmity between the parties and prior to the alleged occurrence, the appellant Gholtu Sah had lodged criminal case against Babloo Singh alias Ashok, who happens to be the elder brother of P.W.6, for making firing and at the time of the alleged occurrence, the aforesaid case was pending and, therefore, the aforesaid fact clearly proves the enmity between the parties.

25. Therefore, in our view, in the backdrop of the aforesaid enmity as well as infirmities and improvements of the statements of the prosecution witnesses in course of trial, the possibility of false implication of the appellants cannot be ruled out and, in our view, the prosecution could not succeed to prove its case beyond all shadows of reasonable doubts and the appellants are entitled to get the benefit of doubt.



26. On the basis of the aforesaid discussions, all the above stated criminal appeals are allowed and the impugned Judgment of conviction and sentence order are, hereby, set aside. The appellants are acquitted of the charges, giving benefit of doubt to them. The appellants are on bail. They are discharged from the liabilities of their respective bail bonds.

(Hemant Kumar Srivastava, J)

(Rajendra Kumar Mishra, J)

Pradeep Srivastava/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	26.10.2018.
Transmission Date	26.10.2018.

