

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.596 of 2015

Judgment dated 10th of June, 2015 passed by the learned Additional District & Sessions Judge, Rosera, District – Samastipur in Session Trial No. 1008/2008

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Udai Jha Son of late Ramashray Jha resident of Village- Sakh Mohan,
Bibhutipuar District Samastipur.

.... Appellant

Versus

The State of Bihar

.... Respondent

With

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Criminal Appeal (DB) No. 634 of 2015

Judgment dated 10th of June, 2015 passed by the learned Additional District & Sessions Judge, Rosera, District – Samastipur in Session Trial No. 1008/2008

- =====
1. Ram Sewak Singh Son of late Surya Narayan Singh resident of Village Sakhmohan , P.s Bibhutipur, District samastipur.
 2. Mithilesh Sah son of Janardan Sah resident of Village Deshri , P.s Bibhutipur, District Samastipur.

.... Appellants

Versus

The State of Bihar

.... Respondent

With

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Criminal Appeal (DB) No. 591 of 2015

Judgment dated 10th of June, 2015 passed by the learned Additional District & Sessions Judge, Rosera, District – Samastipur in Session Trial No. 1008/2008

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Dablu Rajak Son of Kusho Rajak resident of village - Sakhmohan, P.S. Bibhutipur, District - Samastipur

.... Appellant

Versus

The State of Bihar

.... Respondent

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Appearance:

(In Cr.App.(DB) No. 596/2015)

For the appellant : Mr. Shivnandan Pd. Singh, Advocate
Mr. harsh Nandan, Advocate

For the Respondent : Ms. Shashi Bala Verma, A.P.P.

(In Cr.App.(DB) No. 591/2015)



For the appellant : Mr. Abhimanyu Sharma, Advocate

For the State : Mr. Mayanand Jha, A.P.P.

(In Cr.App.(DB) No. 634/2015)

For the appellants : Mr. Vikram Deo Singh, Advocate

Mr. Ashok Kumar, Advocate

For the State : Mr. A.K. Sinha, A.P.P.

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CORAM: HONOURABLE THE CHIEF JUSTICE

And

HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date: 19-04-2018

Heard learned counsel for the appellants and
learned A.P.P. representing the State.

2. These three criminal appeals have been preferred for setting aside the judgment dated 10th of June, 2015 passed by the learned Additional District & Sessions Judge, Rosera, District – Samastipur (hereinafter referred to as the “learned Trial Court”) in Session Trial No. 1008/2008. By the impugned, judgment all the appellants have been convicted for the offences under Section 302/34 of the Indian Penal Code. They have been sentenced to undergo Life Imprisonment and a further fine of Rs. 25,000/- each, in default of payment of fine, they are required to undergo Rigorous Imprisonment of one year. In addition to that, all the appellants have also been convicted under Section 307/34 of the Indian Penal Code and have been sentenced to undergo



rigorous imprisonment of 7 years and a fine of Rs. 5000/- each for the said offence and in default of payment of fine they are further directed to undergo Rigorous Imprisonment of six months. The appellants have also been convicted for the offence under Section 379 of the Indian Penal Code and have been sentenced to undergo rigorous imprisonment of two years and a fine of Rs. 1000/- each, in default of payment of fine, they are directed to further undergo rigorous imprisonment for three months. Apart from above, the appellants have been convicted under Section 27(I) of the Arms Act and have been directed to undergo rigorous imprisonment of five years and a fine of Rs. 5000/- for the said offence and in default of payment of fine, they all are directed to undergo rigorous imprisonment of six months. All the sentences have been ordered to run concurrently.

3. The prosecution case as disclosed from the fardbeyan of Devendra Prasad Singh (P.W.6) recorded on 17.05.2008 at 00.30 hours by the Sub-Inspector, Sri B.P. Dev at Gangauli Chowk falling under Bibhutipur Police Station in the district of Samastipur are as under: -

4. According to the informant, on 16.05.2008 at



about 5.00 p.m. his brother Birendra Prasad Singh had gone to attend the Shradh ceremony of Late Mahendra Singh, son of late Kedar Singh, resident of village Sakh Mohan. The informant claimed that he along with co-villagers Bhushan singh, son of Late Govind Singh, Mithilesh Singh, son of Late Ramanandi Singh reached there to attend the Shradh ceremony at about 8.00 p.m. and after attending the Shradh at about 10.30 p.m. he along with his brother Birendra Prasad Singh (deceased), Ram Badan Singh @ Hakim Singh (deceased), Bhushan Singh, Mithilesh Singh all residents of village – Sakh Mohan, were returning on foot towards his house. It is alleged that as soon as they reached at a distance of about 500 yard towards west-north side from the house of Late Mahendra Singh and were near to the electric pole at about 10.45 p.m., he saw in the torch light and moon light that from the southern side to the road from the bushes and maize field the accused (1) Rajiv Singh @ Rai Jee, son of Ram Jatan Singh, resident of village – Sakh Mohan lashed with country made pistol in his hand (2) Ajay Singh, son of late Narayan Singh, resident of village – Sakh Mohan lashed with pistol in his hand and a carbine hanging with his left shoulder, (3) Udai Jha, son of late Ramashray Jha (appellant) (4) Dablu Rajak, son of Kusho



Rajak (appellant) (5) Rajiv Kumar Singh, son of Arbind Singh (6) Raushan Kumar, son of Late Ramanuj Singh (7) Ram Sevak Singh, son of late Suraj Singh (appellant), all resident of village – Sakh Mohan, (8) Mithilesh Shah, son of late Janardhan Shah (appellant), resident of village – Desari along with other three 3-4 unknown criminals lashed with pistol surrounded the brother of the informant Birendra Pd. Singh and Ram Badan Singh. It is alleged that the appellant Ram Sevak Singh instigated them to kill on which Rajiv Kumar @ Rai Jee fired from the country made pistol on Ram Badan Singh @ Hakim Singh which hit in the left side of the chest of Ram Badan Singh, it started bleeding and he fell down. It is further alleged that Ajay Singh fired from his pistol on Birendra Prasad Singh which hit the left side on the chest, Uday Jha fired from his pistol on the brother of the informant which went into the stomach of the informant's brother and he fell down on his stomach side, thereafter Dablu Rajak is said to have fired from his pistol on the back of the informant's brother and the other accused namely, Rajiv Kumar Singh, Raushan Kumar, Mithilesh Shah and 3-4 other unknown criminals also fired on the informant and others but they started fleeing away raising alarm. In the meantime, it is claimed that on hearing the



sound of hearing some people who were returning from the Shradh ran towards the place of occurrence, thereafter all the accused persons fled away towards the southern maize field, south to the road.

5. After the accused persons fled away, the informant along with other co-villagers went to the place of occurrence and found that his brother Birendra Prasad Singh and Ram Badan Singh @ Hakim Singh were lying in the pool of blood and the licensee pistol, BSNL mobile, SIM new set and the mobile of Ram Binod Singh were all taken away by the criminals. The informant further alleged that the occurrence had taken place because his brother was active in the matter of deposition of witnesses in the murder case of Bhuneshwar Singh and Ramnath Mahto. It is alleged that Tuntun Singh @ Sunil Singh and Madan Singh, both sons of Ram Sevak Singh were in jail in connection with the said case, therefore, the informant claimed that the dreaded criminal Tuntun singh @ Sunil Singh and Madan Singh both sons of Ram Sevak Singh had conspired in the jail and with an intention to threaten the witnesses they got the brother Birendra Prasad Singh and Ram Badan Singh killed through criminals.



6. On the basis of the fardbeyan (Exhibit-5) a formal First Information Report giving rise to Bibhutipur P.S. Case No. 109/2008 was registered on 17.05.2008 at 5.30 a.m. After investigation, police submitted a charge-sheet against all the accused persons and upon taking cognizance of the offences alleged in the charge-sheet and the supplementary charge-sheets, cognizance was taken by the learned Additional Chief Judicial Magistrate, Rosera. Since different charge-sheets were filed, after taking cognizance the learned A.C.J.M., Rosera committed to the court of sessions on different dates, later on after registration of the sessions case all the sessions trials bearing Sessions Trial No. 1008/2008, Sessions Trial No. 215/2009, Sessions Trial No. 571/2010 were amalgamated with the original Sessions Trial No. 1008/2008. It appears that the case of the accused Ajay Singh was separated vide order dated 08.09.2011.

7. Charges were framed against the accused Dablu Rajak, Mithilesh Sah for the offences punishable under Section 302/34, 307/34, 379/34 of the Indian Penal Code and section 27(i) of the Arms Act. Accused Udai Jha charged for the offences punishable under Sections 302, 307/34, 379/34 of the Indian



Penal Code and Section 27(i) of the Arms Act and further accused Tuntun Singh @ Sunil Singh and Madan Singh were charged for the offences under Section 302/120B of the Indian Penal Code. Accused Ram Sevak Singh and Rajiv Kumar Singh @ Rajiv Singh, son of Arbind Singh were charged for the offences punishable under Section 302/34, 307/34, 379/34 of the Indian Penal Code and section 27(i) of the Arms Act.

8. On behalf of the prosecution altogether 11 witnesses were examined to prove the guilt of the accused persons who were facing the trial. The prosecution got exhibited documents such as :

Exhibit-1, Signature of the witness, Pawan Kumar Singh on the seizure list prepared on 17.05.2008,

Exhibit-2-Statement of witness Bhushan Singh recorded under Section 164 Cr.P.C.,

Exhibit-3 - Signature of informant Devendra Pd. Singh on his fardbeyan,

Exhibit-3/1 - Signature of witness Laxman Prasad Sah on fardbeyan of informant,

Exhibit-3/2 - Signature of I.O. B.P. Deo on fardbeyan,

Exhibit-3/3 - Signature of I.O. B.P. Deo on seizure list.

Exhibit-3/5 - supplementary P.M. Report (carbon



copy)

Exhibit-4 – Statement of informant Devendra Prasad Singh recorded U/s 164 Cr.P.C.

Exhibit-5 – Fardbeyan of informant.

Exhibit-6 – Post Mortem report of deceased Birendra Prasad Singh

Exhibit-7 – Post Mortem report of deceased Ram Badan Singh

Exhibit-8 – Certified copy of judgment of Sessions Trial No. 627A of 2003

Exhibit-9 – Certified copy of charge sheet of Rosera P.S. Case No. 57/12 dated 31.03.12

Exhibit-10 – Certified copy of judgment of G.R. No. 442/2007

Exhibit-11 – Certified copy of written report of Jail Suptd. Rakesh Kumar for instituting F.I.R. against the prisoner Tuntun Singh, Madan Singh and Gopal Jha dated 16.03.12

Exhibit-12 – Certified copy of Seizure List dated 16.03.12

Exhibit-13 – Certified copy of charge sheet dated 8.11.93 of Bibhutipur P.S. Case No. 90/1993.

Exhibit-X – (Marked for identification) attested copy of Inquest Report of deceased Ram Bahadur Singh.

Exhibit-X/1 – (Marked for identification) attested copy of Inquest Report of deceased Birendra Prasad Singh.



9. The defence did not examine any witness but got exhibited certain documents such as:

Exhibit-A - The certified copy of the order-sheet of criminal appeal No. 105/2008,

Exhibit-B - Certified copy of Bibhutipur P.S. Case No. 5/1978 and

Exhibit-C – Xerox copy of certified copy of F.I.R. of G.R. no. 1807/1981.

10. The learned Trial Court examined the prosecution case in the light of the deposition of the witnesses, their examination and cross examination and in ultimate analysis found that the actual place of occurrence has been established as per prosecution version because the Investigating Officer (I.O.) has seized cartridges and Khokha, Chappal and spectacles from the place of occurrence. The learned Trial Court found that from the evidence it appeared that blood was also found by the I.O. at the place of occurrence. The learned Trial Court also held that the evidence of the eye witnesses have been corroborated by the medical evidence of P.W.9, Dr. Rakesh Chandra Sahay Verma, who conducted the autopsy along with two members of the Board on the dead body of both deceased and found that the



number of wounds found by the doctor at the time of post mortem examination are totally matching with the fardbeyan and evidences of the eye witnesses. The learned Trial Court also held that the presence of tattooing marks also supported the prosecution case that firing was done from a few feet distance as stated by the eye witnesses. According to learned Trial Court, the P.W.4, Mithilesh Kumar Singh, P.W.5, Bhushan Singh and P.W.6, Devendra Pd. Singh (informant) are the eye witnesses of the occurrence and they all have fully supported the allegation of the prosecution and their evidences are quite consistent to each other. In the opinion of the learned trial court, these witnesses have fully corroborated the prosecution story and no any vital or material contradictions came out regarding the date and time of occurrence, place of occurrence and manner of occurrence from their cross examination.

11. The learned Trial Court examined the point of 'in furtherance of common intention' of the accused which comes under Section 34 of the I.P.C. Referring to a judgment of this court in the case of **Binod Prasad Vs. State of Bihar** reported in **2008 (4) PLJR 619**; the learned Trial Court held that the materials available on the record shows that all the accused persons who



are facing the trial along with other accused (except accused Tuntun Singh and Madan Singh, who were in jail and accused Rajiv Kumar Singh, son of Arbind Singh, who has been acquitted on the basis of benefit of doubts) had come to the place of occurrence having been fully prepared to commit the murder of deceased Birendra Singh and Ram Badan Singh @ Hakim Singh and in furtherance of their common intention they reached near the deceased, accused Ram Sevak Singh gave order to other accused persons to shoot them and finish, upon which the accused Rajiv Singh @ Rai Jee and Ajay Singh (both were not facing trial in this case) and Udai Jha and Dablu Rajak (the appellants) fired upon both the deceased causing them injuries on the spot to which they succumbed and died. The trial court also held that the accused persons resorted firing upon the eye witnesses and they took away the pistol and mobile of the deceased and fled towards the maize field. According to learned trial court, hiding of accused persons in bushes and maize field prior to the occurrence and waiting for reaching the deceased and others on the place of occurrence shows that the accused persons committing this crime had come in a well pre-planned way.



12. In course of trial, the learned defence counsel raised several issues and the accused in their statements under Section 313 Cr.P.C. claimed to be innocent as they stated that they had been falsely implicated in this case due to political rivalry and previous enmity and they had not committed the murder of Birendra Prasad Singh and Ram Badan Singh @ Hakim Singh after making conspiracy and had not committed theft and attempt to murder.

13. The defence raised an issue of identification of the accused and submitted that in this case the means of identification has not been proved because the torch in question had not been seized and produced by the Investigating officer. Further it was submitted that there is two days delay in sending the F.I.R. to the court and the delay creates doubt regarding the alleged occurrence and manner thereof. In response, it was the submission of learned Additional Public Prosecutor that it is not a case of defence that F.I.R. is anti-dated or a fabricated document. It was submitted that the post mortem report and inquest report show that the date of occurrence is 16.05.2008 and the time was 10.45 p.m., post mortem was conducted on 17.05.2008 at 10.30 a.m. to 10.45 a.m. and because the I.O. was busy in recording the



statement of witnesses and in sending the dead bodies to the post mortem house the F.I.R. could not be sent to the court immediately.

14. In support of this contention the prosecution relied upon the judgment of the Hon'ble of Apex Court in the case of **Guiram Monal vs. State of West Bengal** reported in **2013 (3) PLJR SC page 335**; wherein it was observed by the Hon'ble Apex court that "Mere delay in sending F.I.R. to the Magistrate cannot be a ground to throw out prosecution case, the evidence adduced is found credible and trustworthy."

15. The learned Trial Court agreed with the submission of the defence that the investigating officer had not collected any blood stained soil from the place of occurrence and had not seized the wearing cloths of the deceased and had not produced any material exhibits in court which shows that the I.O. had not investigated this case scientifically, but according to the learned Trial Court, it is also a fact that the prosecution has adduced such a credible and trustworthy witnesses along with medical evidence in support of its case that only due to the aforesaid shortcomings, it cannot be said that prosecution had failed to prove its case.



16. The trial court ultimately convicted the accused as stated above.

17. In appeal before us, learned counsel representing the appellants in three different appeals have assailed the impugned judgment of the learned Trial court submitting that the learned Trial Court has committed grave error in appreciation of the evidences available on the record. According to learned counsel representing the appellants the entire evidences brought by the prosecution is full of vital and material contradictions which would be apparent from a bare reading of the deposition of not only the informant but also the other prosecution witnesses who have claimed themselves to be an eye witnesses. They have submitted that the delay in sending of the F.I.R. to the court alone may not be a ground to absolve the accused-appellants from the case but in the nature of the contradictions which are available in the deposition of the prosecution witnesses, place of occurrence as well as the manner of occurrence as stated by the prosecution are not believable and the entire story as brought by the prosecution would fall on a proper appreciation of the evidences.

18. Learned counsel for the parties have addressed



this court on the following aspects of the matter:

- (I) **Means of Identification** – It is the case of the appellants that the means of identification appears to be doubtful. According to the F.I.R. and P.W.6 he identified the accused appellants in moonlight and torch light but the torch was never seized by the police and not produced in trial. P.W.4 has come out with a statement that he identified the assailants in torch and moonlight whereas P.W.5 says that he identified the assailants in torch light. On the contrary P.W.2 says that it was a dark night. The torch which was in the hands of the witnesses was never shown to the police nor the same was seized. I.O. who came soon after the occurrence has not stated that any torch was shown to him or any seizure of any torch was prepared. Further it is submitted that when there were so many accused who were committing occurrence it was not possible for the



witnesses to identify all the accused by face and with their overt act. Possession of torch by the witnesses without any corroboration by the independent source or by police is highly doubtful. P.W.2, Pawan Kumar Singh who came at the place of occurrence talked to witnesses and met police, signed the seizure list as witness has specifically stated in paragraph 7 of his deposition that it was a dark night.

(II) **Delay in lodging of F.I.R.** – It is further submission of the appellants that first statement recorded by police appears to be belated, concocted and afterthought, it was never recorded on the alleged date and time of occurrence. The date of occurrence is 16.05.2008 at 10.45 p.m., date of report is 17.05.2008 at 00.30 hours, whereas date of F.I.R. is 17.05.2008 at 5.30 a.m. but the F.I.R. arrived in court after two days on



19.05.2008. Further P.W.6 Devendra Prasad Singh (informant) has stated in para-14 of his deposition that on the day of occurrence he was not examined by police. This fact is further supported by the post mortem report as it does not bear the case number.

(III) **Place of occurrence** – It is common submission of appellants that no any occurrence took place at the place as narrated by the prosecution. It is their stand that when the witnesses came to know about the death of the deceased, later on due to political rivalry they got the appellants falsely implicated. Sons of the appellant Ram Sevak Singh who were in the Judicial custody from before were implicated, they were however acquitted in the trial and the charge of thin committing conspiracy could not be proved. It is submitted that according to the prosecution case the witnesses and the



deceased had gone to attend the Shradh of one co-villager Late Mahendra Singh and while returning in the village itself the occurrence took place. A question has been raised as to why the dead body of two deceased were carried to 2 ½ to 3 k.m. from the place where the deceased had already died at the place of occurrence itself. According to the Investigating Officer (P.W.7) the distance to Gangauli Chowk is 2 ½ to 3 k.m. and it takes 10-15 minutes by vehicle. It is highly surprising that when the house of both the deceased were in village itself, house of deceased Ram Badan Singh was just 500 yards from the place of occurrence then neither any family member of Ram Badan Singh came at the place of occurrence nor anyone could be examined during investigation or trial nor the dead body was brought to his house. In this connection reference has been made to paragraph 7 of



the deposition of the informant (P.W.6) who has stated about the distance. P.W.5, Bhushan Singh has stated that none of the family of deceased Ram Badan Singh was seen at the place of occurrence. P.W.6 has also stated that no family member was seen. He has further stated that the family members were not informed about the occurrence. The appellants therefore submit that it is not the case of the prosecution that deceased were alive and were carried to Gangauli Chowk for treatment as even according to the case of the prosecution the deceased had already died and for safety purposes bodies were taken to the Chowk, the question is why the Gangauli Chowk where only few shops were there which were also closed during the dead of night hours, why the dead bodies were not taken to the house of the deceased which were nearer to the place of occurrence. The I.O. (P.W.7) has



stated in para-10 of his deposition that nobody told him as to who brought the dead body at Gangauli Chowk.

19. It is further submission of the appellants that according to the prosecution case the deceased and informant were coming after attending Shradh but on post mortem examination the stomach of the deceased was found empty and it did not contain any food. The doctor (P.W.4) has stated in his deposition that he had not mentioned about food in the stomach. Pawan Kumar Singh (P.W.2) in his deposition states that all were returning after taking meal, but the post mortem report does not corroborate this story.

20. It is further case of the prosecution that both the deceased were brought to Gangauli Chowk on cot but from the inquest report or from the statement of I.O. (P.W.7), it would appear that there is no mention about any cot rather P.W.2 has stated that the bodies were lying on the ground. I.O. (P.W.7) has stated in deposition that he has not mentioned in the inquest that bodies were on cot or earth. It is also submitted that in the night the place of occurrence was said to have been inspected



but no any blood was seized because it was not the place of occurrence. Pawan Kumar Singh (P.W.2) has stated that in the night itself place of occurrence was inspected in his presence but the I.O. (P.W.7) has stated that no blood was collected by him and no blood was found. In paragraph 2 of his deposition the I.O. has stated that he did not remember as to whether he reached the place of occurrence before sunrise or after sunrise. He had not mentioned about the means of light during inspection and he did not remember that how many empty cartridges were recovered from the place of occurrence. He did not mention about the recovery of cartridges from the place of occurrence in the case diary. He did not prepare the Nazri Naksa map of the place of occurrence. He had not taken statement of any of the family member of Late Mahendra Singh. He did not remember who had prepared the seizure list and further he did not got the identification done of the sleepers and spectacle found on the place of occurrence. He had also not examined any person from the village where the deceased and the informant were said to have gone for attending Shradh. The I.O. had not collected the call details of the mobile of Tuntun Singh and Madan Singh who were in jail. He has specifically stated in paragraph 5 of his



deposition that he had not collected any evidence regarding criminal conspiracy against Tuntun Singh and Madan Singh. The I.O. (P.W.7) has further stated that he did not seize the blood stained soil from the place where the dead body of the deceased were found. He had not seized the blood stained cloths of the deceased. He further stated that no witness told him that Tuntun Singh and Madan Singh had told about the conspiracy to kill the deceased persons. In the case diary, there were no mentions about how the dead bodies reached Gangauli Chowk from the place of occurrence because no witness had told him about this.

21. Learned counsel for the appellants submit that in para-1 of his deposition the I.O. (P.W.7) has given the description of the place of occurrence, the place of occurrence is said to be near the Thakurbari, according to this witness grass as well as maize crops of 5 - 6 feets height were standing at the place of occurrence and the accused were said to be hiding in that but no any crop were found destroyed nor any trampling marks were found even though the accused were allegedly 11-12 in number. In this connection, attention of this court has been drawn towards the statement of P.W.6 in para-4 and statement of P.W.7 at page 67 and 68 of the paper book. It is also pointed out



that the priest of Thakurbari was not examined and the I.O. has shown seizure of one empty cartridge from the bush which clearly falsifies the prosecution case as according to the prosecution there were several rounds of firing and at least 10-12 empty cartridges should have been there. On the strength of this argument, learned counsel for the appellants submits that all these facts would show that the occurrence took place at another place which is near the Gangauli Chowk and according to them it appears that while both the deceased were returning late in night, they were intercepted by road robbers and they were killed when they protested. The ornaments, mobile and revolver were taken away. If the accused persons had intention to kill they would not have taken away at least mobiles and ornaments. No family member of Ram Badan Singh came to depose the false case.

22. Learned counsel for the appellants have also pointed out that the falsity of the prosecution case is apparent from the fact that the name of accused Rajiv Kumar Singh Son of Ramanuj Singh was involved in the case, he was named in F.I.R. and was charge-sheeted but in course of evidence the informant changed his version and specifically stated that Rajiv Kumar Singh



was not present at the place of occurrence. In this regard the statement of P.W.4 Mithilesh Kumar Singh, P.W.5- Bhushan Singh, and P.W.6- Devendra Prasad Singh have been brought to the notice of this court. It is further submitted that appellant Ram Sevak Singh was aged about 70 years at the time of alleged occurrence. Now he is 88 years old. He was arrested from his house soon after occurrence. His arrest form the house itself shows that he was not apprehending his arrest in connection with this case but was falsely implicated because of enmity with his two sons. It is also pointed out that the allegation against the appellants that all fired on the person of the informant and witnesses are equally false. It is submitted that while the informant and witnesses were fleeing, how can they identify from behind as to who fired. There was no injury to anybody. It is also pointed out that Birendra Prasad Singh (deceased) was a criminal and cases were pending against him. Informant (P.W.6) in his statement has stated that the accused was involved in the murder case of Ram Uday Singh. It is submitted that there was no motive for killing of the deceased Ram Badan Singh and in fact both the persons died in road robbery.

23. On the other hand, learned A.P.P. representing



the State has defended the impugned judgment and submitted that it is a case of double murder where minor discrepancies in the evidence of the prosecution may not be taken as material and vital discrepancy so as to acquit the accused persons from the prison. It is submitted that no doubt some scientific investigation were required to be done in the present case by the investigating officer but failure on the part of the investigating officer in conducting such scientific investigation would not help the accused where there are witnesses clearly suggesting that they had killed the deceased of this case. Learned A.P.P. has relied upon the reasonings provided by the learned trial court.

CONSIDERATION

24. Having heard learned counsel for the appellants and learned A.P.P. representing the State as also on perusal of the records received from the learned Trial Court, we find that there are material and vital discrepancies in the statements of the prosecution witnesses. The statements of the prosecution witnesses are required to be considered keeping in mind the delay of two days in receipt of the F.I.R. in the court. According to the learned Trial Court, the evidence of eye witnesses as well as the evidence of the I.O. and from the seizure list (Exhibit-1) the



actual place of occurrence is established but when we go into the evidences of the prosecution witnesses a serious doubt is crept in about the place of occurrence. The informant (P.W.6) has cited three names in his fardbeyan. Bhushan Singh (P.W.5), Mithilesh Singh (P.W.4) and Laxman Prasad Sah were cited as witnesses but Laxman Prasad Sah has not been examined in this case. According to the informant, the occurrence took place when he along with the deceased and the witnesses were returning to his house on foot. The occurrence took place near the house of late Mahendra Singh, at a distance of 500 yards only at 10.45 p.m., he is said to have identified as many as eight accused persons in the torch light and moonlight, but the torch was never produced before the I.O. and no seizure list of the torch was prepared. P.W.2 in his deposition has stated that it was a dark night. The means of identification i.e. the torch is not proved, moreover, it is not believable that surrounded by eight accused persons who were lashed with pistol and carbine, the informant would continue to see the alleged occurrence in the torch light and even if it is believed that it is the moonlight, it is not possible to believe that the informant and other witnesses, if present on the place of occurrence, could have escaped injury of fire-arms



because it is the case of the informant that the 3-4 unknown criminals had fired on him and the witnesses also, but they had fled away. Another aspect of the matter which remains unsolved is that if the occurrence had taken place at a distance of only 500 yards from the house of Late Mahendra Singh, then, why the dead body were not brought to the house which could have been the safest place to take care of the dead bodies. The house of the informant was at a distance of 1:1/4 k.m. only from the place of occurrence. Still the dead bodies were taken to Gangauli Chowk at a distance of about 2 ½ - 3 k.m. in the night hours. The occurrence in the case had taken place at about 10.45 p.m., police arrived at the place of occurrence after 1 ½ hours, the informant was carrying a mobile but he did not make a call to his family members and no information was given to the family members of Ram Badan Singh (deceased) about the alleged occurrence. It is difficult to understand as to how such an unfortunate happening could not be brought to the notice of the family of the deceased even though the informant was carrying a mobile. The Investigating Officer has not traced the location of the mobile of the informant and therefore there is no scientific evidence to show the presence of the informant (P.W.6), P.W.4



and P.W.5 present at the place of occurrence. It further appears that in the fardbeyan informant alleged that the appellant Dablu Rajak had fired from his pistol on the back of the deceased Birendra Prasad Singh but neither the inquest report nor the post mortem report supported the statement of the informant as no entry wound has been found on the back of the deceased Birendra Prasad Singh. On the contrary, there is an exit wound on the back and it is because the informant was unable to understand what is an entry wound and an exit wound he named Dablu Rajak as one of the assailants who allegedly fired on the back of the deceased.

25. The informant (P.W.6) in his deposition has stated that he was not further examined by the I.O. on the date of occurrence. The deposition of I.O. shows that he had not got identified the sleeper and spectacle which he claims to have been found from the alleged place of occurrence. He has shown seizure of one empty cartridge from the place of occurrence, whereas according to the prosecution case there should have been at least 10-12 empty cartridges. I.O. did not seize any blood-stained soil from the place of occurrence and blood-stained cloth of the deceased. The I.O. was not informed as to



how the dead bodies of both the deceased were brought to the Gangauli Chowk which was at a distance of 2 ½ - 3 k.m. from the place of occurrence. The post mortem report (Exhibit-6 and Exhibit-7) did not mention about presence of food in the stomach of the deceased persons. According to the prosecution the deceased were returning after attending Shradh, P.W.2, Pawan Kumar Singh, has stated in paragraph-1 of his deposition that all persons were returning after taking meal (Bhoj). P.W.2, Pawan Kumar Singh has not been cited as a witness in the fardbeyan of P.W.6. He is a hearsay witness and has proved the seizure list (Exhibit-1). One of the seizure list witness is Laxman Prasad Sah who was named as an eye witness but has not been examined in course of evidence. According to the seizure list (Exhibit-1), three 9 m.m. empty cartridges, one 9 m.m. cartridge and three old plastic sleepers and one black colour spectacle were found from the place of occurrence. The I.O. (P.W.7) did not examine any person from the village where the deceased and the informant had gone to attend the Shradh, he did not remember as to when did he reach the place of occurrence and whether he reached there before sunrise or after sunrise. He did not remember even the means of light in which he inspected the place of occurrence.



He did not prepare the Nazri map of the place of occurrence and did not mention in the diary as to how many empty cartridges were recovered from the place of occurrence. All these discrepancies in the investigation process are vital and shall prove fatal to the prosecution case. The I.O. did not remember as to who prepared the seizure list, and, therefore, in our considered opinion, the seizure list (Exhibit-1) in itself is not a reliable piece of evidence to prove the place of occurrence in the present case. there is no evidence that because of hiding of 10-12 persons in the bushes and maize field there was any trampling of the crops and any sign of such hiding was available in the bushes.

26. We have taken note of various other discrepancies in the prosecution case such as that in course of evidence the informant changed his version regarding the presence of one accused Rajiv Kumar Singh which was supported by P.Ws. 4 & 5. This throws a serious doubt on the conduct of the prosecution as it is the case of the defence that they have been falsely implicated because of political rivalry. We also found that after about two months from the date of occurrence, police got recorded the statement of the informant, P.Ws. 4 & 5 under



Section 164 Cr.P.C. and recorded their statement in the case diary. In paragraph 2 of his evidence, Jay Chandra Ram, Police Inspector (P.W.8) has stated that he had not recorded the statement of any of the witnesses in course of investigation and the statement under Section 164 Cr.P.C. was got recorded on the direction of the senior officer. He had not taken any action to obtain the mobile and their call details report of the accused. He had not got verified the mobiles. He has stated that the deceased Birendra Singh was a member of CPM and was a supporter of the member of legislative assembly, on this point he had not conducted any investigation.

27. From aforementioned discussions, we are of the considered opinion that there are vital discrepancies in the prosecution story and many facets of it has remained doubtful as not proved by reliable and cogent evidences. There is no explanation muchless any plausible explanation to the question as to how and why the dead bodies of the two deceased persons were taken to Gangauli Chowk at a distance of 2 ½ k.m. in the night hours and not to the house of Late Mahendra Singh which was situated at a distance of 500 yards only in the village. No family members of Ram Badan Singh deposed to support the



prosecution case which is a serious lacuna in prosecution case and the material witnesses such as the priest of Thakurbari which was near the place of occurrence and independent witnesses from the village where the deceased is said to have visited for attending Shradh were not examined, we find that the prosecution has failed to prove the guilt of the accused persons beyond all reasonable doubts. The investigation in the present case has missed out on important aspects of the matter, the mobile locations were not traced and even the seizure of the empty cartridges were not mentioned in the case diary. The allegation of entering into criminal conspiracy by two sons of Ram Sevak Singh has ahead failed. The finding of the learned Trial Court that the evidence of eye witnesses as well as the evidence of I.Os. and from the seizure list the prosecution has established the actual place of occurrence and manner of occurrence, in our considered opinion, is not a correct finding of fact. The prosecution in the present case has miserably failed to prove the place of occurrence and the manner of occurrence as alleged. We have found that no entry wound has been present on the back side of the deceased Birendra Prasad Singh, and therefore, the allegation that Dablu Rajak had fired from his pistol on the back



of deceased Birendra Prasad Singh stands falsified and the ocular evidence does not get support from the medical evidence available on the record. These vital discrepancies when considered alongwith the contention of the appellants that there was a delay of two days in receipt of F.I.R. in court, it creates doubt on the veracity of the entire prosecution case. Enmity cuts both ways, therefore false implication of the appellants by informant when he found the dead bodies of the deceased of this case at Gangauli Chowk in the night hours cannot be ruled out.

28. In the result, the conviction of the appellants cannot be sustained. The judgment of the learned Trial Court is hereby set aside and the appellants are acquitted from the charges levelled against them giving them benefit of doubt, and they are directed to be released in this case.

29. All the appeals are allowed, accordingly.

(Rajendra Menon, CJ.)

Rajeev/-

(Rajeev Ranjan Prasad, J.)

AFR/NAFR	NAFR
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