

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No. 231 of 2015

Arising Out of PS. Case No.-208 Year-2011 Thana- Jakkanpur District- Patna

Kundan Singh son of Late Kamakhaya Narayan Singh, residents of Village -
Chirelly P.S. - Tekari, District - Gaya.

... .. Appellant

Versus

The State of Bihar

... .. Respondent

with

Criminal Appeal (DB) No. 65 of 2015

Arising Out of PS. Case No.-208 Year-2011 Thana- Jakkanpur District- Patna

1. Nagina Singh, Son of Rambali Singh, Resident of village-
Chandauti, P.S.- Chandauti, District- Gaya
2. Balmukund Singh, Son of Late Shivnandan Singh, Resident of
village- Jalalpur, P.S.- Tekari, District- Gaya
3. Yugal Kishore Singh @ Pappu @ Pappu Singh, Son of Sri
Kauleshwar Prasad Singh, Resident of village- Chirali, P.S.-
Tekari, District- Gaya

... .. Appellants

Versus

The State of Bihar

... .. Respondent

with

Criminal Appeal (DB) No. 88 of 2015

Arising Out of PS. Case No.-208 Year-2011 Thana- Jakkanpur District- Patna

Ram Niwas Singh Ram Niwas @ Newton @ Gholten, S/o Sri Ajay Sharma,
R/o Village – Usari Chakiya, P.S. - Mehandia, District – Arwal.

... .. Appellant

Versus

The State Of Bihar

... .. Respondent

with

Criminal Appeal (DB) No. 193 of 2015

Arising Out of PS. Case No.-208 Year-2011 Thana- Jakkanpur District- Patna

Mantu Kumar @ Mantu Singh S/o Sri Kundan Singh, R/o Village- Chirali,
P.S.- Tekari, District- Gaya

... .. Appellant

Versus

The State of Bihar

... .. Respondent



with
Criminal Appeal (DB) No. 301 of 2015

Arising Out of PS. Case No.-208 Year-2011 Thana- Jakkanpur District- Patna

Kripa Shankar Singh son of Deodatta Singh Resident of village - Kunda
Kothi P.T.C. Chowk, P.S. Sadar District Hazaribagh.

... .. Appellant

Versus

The State of Bihar.

... .. Respondent

Appearance :

(In Criminal Appeal (DB) No. 231 of 2015)

(In Criminal Appeal (DB) No. 65 of 2015)

(In Criminal Appeal (DB) No. 88 of 2015)

(In Criminal Appeal (DB) No. 193 of 2015)

For the Appellants : Mr. Surendra Singh, Sr. Advocate
Mr. Akhileshwar Pd. Singh, Sr. Advocate
Mr. Ravindra Kumar, Advocate

(In Criminal Appeal (DB) No. 301 of 2015)

For the Appellant : Ms. Soni Shrivastava, Advocate
Mr. Ram Prawesh Kumar, Advocate
Mr. Ravi Bhardwaj, Advocate
Ms. Madhuri Kumari, Advocate

For the State : Mr. Mayanand Jha (Addl. Public Prosecutor)
(in all the appeals)

For the Informant : Mr. Amar Nath Singh, Advocate
(in all the appeals) Mr. Raj Narayan Mishra, Advocate

CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

and

HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAKESH KUMAR)

Date : 25-09-2018

Appellants in all the five appeals were tried together and
convicted & sentenced in one trial and as such, all the aforesaid
appeals were taken up together and are being disposed of by this
common judgment.

2. All the appellants by judgment dated 22-12-2014
passed in Sessions Trial No. 325 of 2012 (arising out of Jakkanpur



P.S. Case No. 208 of 2011) were convicted for commission of offence under Section 302/149,144 of the Indian Penal Code, 1860 (hereinafter referred to as 'I.P.C.') and Section 27 of the Arms Act, 1959 (hereinafter referred to as 'Arms Act'), whereas Kundan Singh (appellant in Cr. Appeal DB No. 231 of 2015), Kripa Shankar Singh (appellant in Cr. Appeal DB No. 301 of 2015) and Mantu Singh (appellant in Cr. Appeal DB No. 193 of 2015) were further held guilty for commission of offence under Section 307/34 of I.P.C. By order dated 03-01-2015, all the aforesaid appellants under Section 302/149 of I.P.C. were sentenced to undergo rigorous imprisonment for life and to pay fine of Rs. 25,000/- (Twenty five thousand) each and in default of payment of fine, they were directed to further undergo simple imprisonment for six months. By the same order i.e. order dated 03-01-2015, under Section 144 of the I.P.C., all the appellants were directed to undergo rigorous imprisonment for one year and under Section 27 of the Arms Act, all the appellants were directed to undergo rigorous imprisonment for four years. The aforesaid three appellants namely, Kundan Singh (appellant in Cr. Appeal DB No. 231 of 2015), Kripa Shankar Singh (appellant in Cr. Appeal DB No. 301 of 2015) and Mantu Singh (appellant in Cr. Appeal DB No. 193 of 2015) under Section 307/34 of the I.P.C. were directed



to undergo rigorous imprisonment for seven years and to pay fine of Rs. 15,000/- (fifteen thousand) each and in default of payment of fine, they were directed to further undergo simple imprisonment for three months. All the sentenced were directed to run concurrently. The judgment of conviction and sentence was passed by Sri Satya Prakash, learned Additional Sessions Judge-VI, Patna (hereinafter referred to as 'Trial Judge').

3. Short fact of the case is that on 27-07-2011, a written report on behalf of Bhanu Kumar Chaudhary @ Santosh Kumar Chaudhary was submitted to the officer incharge, Jakkanpur Police Station, Patna disclosing therein that he was owner of 'Krishna Rath' bus service. On 27-07-2011, in the evening at 06:00 PM, he arrived bus stand situated at Mithapur in the office of Krishna Rath. His elder brother Ravi Kant Chaudhary (deceased) at about 07:15 PM (evening) also came to his office situated at Mithapur bus stand and sat there. Besides both i.e. informant and his brother (deceased), Anil Kumar Singh (P.W.13), Ram Kumar Sharma (P.W.4), Munna Thakur (P.W.11), Surendra Goswami (P.W.7), Ashok (not examined) etc. were sitting in the said office and they were discussing regarding movement of the vehicle and also regarding accounts. In the office and outside office, there were light of electricity. In the meanwhile, at 08:30 PM (evening), one



white colour Scorpio vehicle stopped opposite to his office and four persons got down from the said white colour vehicle, who were (i) Kundan Singh (appellant in Cr. Appeal DB No. 231 of 2015), (ii) Mantu Singh (appellant in Cr. Appeal DB No. 193 of 2015), (iii) Kripa Shankar Singh (appellant in Cr. Appeal DB No. 301 of 2015), (iv) Suraj Kumar (not forwarded as accused), who was bodyguard of Kundan Singh. All the four persons were carrying rifle and pistol. Kundan Singh (appellant in Cr. Appeal DB No. 231 of 2015) and Mantu Singh (appellant in Cr. Appeal DB No. 193 of 2015) carrying rifle in their hands, Kripa Shankar Singh (appellant in Cr. Appeal DB No. 301 of 2015) and Suraj Kumar (not forwarded as accused) carrying pistol in their hands came inside the office of the informant, where his brother Ravi Kant Chaudhary (deceased) was sitting. Kundan Singh (appellant in Cr. Appeal DB No. 231 of 2015) fired from his rifle and shouted to immediately fire and thereafter, Mantu Singh (appellant in Cr. Appeal DB No. 193 of 2015) fired from his rifle, which he was carrying, Kripa Shankar Singh (appellant in Cr. Appeal DB No. 301 of 2015) fired from his pistol, which hit the chest of Ravi Kant (deceased), near right neck and also near the eye whereby his head was blown up and blood started oozing out. His brother died in the sitting condition on the chair itself. Surendra Goswami (P.W.7)



was standing near his deceased brother and he also received fire arm injury on his thigh. Thereafter, there was complete chaos and people started running away. After the firing was made, the accused persons on the said white color Scorpio fled away and while fleeing away, Suraj Kumar also fired from his pistol. In the Scorpio, besides aforesaid four accused persons and driver, two other unknown persons were also sitting and Scorpio was in start condition. While Scorpio was moving, he identified the number of vehicle, which was 0027. The informant further stated that with Kundan Singh (appellant in Cr. Appeal DB No. 231 of 2015) and his men, since earlier a dispute was going on regarding timing of buses and permit and due to this animosity, earlier also there was dispute with Kundan Singh (appellant in Cr. Appeal DB No. 231 of 2015). He claimed that he and others, who were sitting in the office, had seen the occurrence. The said written report was signed by the informant and also by one Anil Kumar (P.W.13).

4. On the basis of said written report of Bhanu Kumar @ Santosh Kumar Chaudhary (P.W.14), a formal F.I.R., vide Jakkanpur P.S. Case No. 208 of 2011, was registered on 27-07-2011 at 10:15 PM for offence under Sections 324/307/302/34 of the Indian Penal Code and Section 27 of the Arms Act against (i) Kundan Singh (appellant in Cr. Appeal DB



No. 231 of 2015), (ii) Mantu Singh (appellant in Cr. Appeal DB No. 193 of 2015), (iii) Kripa Shankar Singh (appellant in Cr. Appeal DB No. 301 of 2015), (iv) Suraj Kumar (not tried) (v) driver of Scorpio and two other unknown accused persons.

5. The police prepared inquest report on the dead body and it was sent for *post-mortem* examination and during investigation, since accusation was found true, chargesheet was submitted on 17-09-2011 against (i) Kundan Singh (appellant in Cr. Appeal DB No. 231 of 2015), (ii) Mantu Singh (appellant in Cr. Appeal DB No. 193 of 2015), (iii) Kripa Shankar Singh (appellant in Cr. Appeal DB No. 301 of 2015), (iv) Balmukund Singh (appellant-2 in Cr. Appeal DB No. 65 of 2015) as well as one Pappu Singh, who is appellant no. 3 in Cr. Appeal (DB) No. 65 of 2015. After submission of chargesheet on 19-09-2011, learned Chief Judicial Magistrate, Patna took cognizance of the offence and thereafter, on 14-06-2012, supplementary chargesheet was submitted against Ram Niwas Singh (appellant in Cr. Appeal DB No. 88 of 2015) and Nagina Singh (appellant no. 1 in Cr. Appeal DB No. 65 of 2015). After submission of chargesheet, firstly case of five accused persons was committed to the court of sessions on 16-03-2012 and it was numbered as Sessions Trial No. 325 of 2012. Subsequently, after submission of supplementary



chargesheet, the case of remaining two accused persons was committed to the court of sessions and after commitment of the case, on 13-09-2012 joint charges were framed under Section 307/34 of the I.P.C. and Section 27 of the Arms Act against (i) Kundan Singh (appellant in Cr. Appeal DB No. 231 of 2015) (ii) Kripa Shankar Singh (appellant in Cr. Appeal DB No. 301 of 2015) & Mantu Singh (appellant in Cr. Appeal DB No. 193 of 2015) and on the same date, joint charge was framed under Section 302/149 and 120(B) of the I.P.C. against (i)Kundan Singh (appellant in Cr. Appeal DB No. 231 of 2015), (ii) Kripa Shankar Singh (appellant in Cr. Appeal DB No. 301 of 2015), (iii) Mantu Singh (appellant in Cr. Appeal DB No. 192 of 2015), (iv)Yugal Kishore Singh @ Pappu @ Pappu Singh (appellant no. 3 in Cr. Appeal DB No. 65 of 2015) and (v) Balmukund Singh (appellant no. 2 in Cr. Appeal DB No. 65 of 2015). Subsequently, on 26-09-2012, trial of other convicts i.e. Sessions Trial No. 979 of 2012 was directed to be amalgamated with Sessions Trial No. 325 of 2012 and on the same date i.e. on 26-09-2012, joint charge under Sections 302/149, 120(B) of the I.P.C. was framed against Nagina Singh (appellant no. 1 in Cr. Appeal DB No. 65 of 2015) and Ram Niwas Singh (appellant in Cr. Appeal DB No. 88 of 2015). In the case, since charge against Ram Niwas Singh was not



earlier framed under Section 27 of the Arms Act, on 25-03-2014, charge against Ram Niwas Singh (appellant in Cr. Appeal DB No. 88 of 2015) was framed under Section 27 of the Arms Act.

6. During the trial, to prove its case on behalf of the prosecution, altogether 15 witnesses were examined. Since at the time of argument, Sri Surendra Singh, learned senior counsel for the appellants had tried to persuade the Court that witnesses examined during investigation on different dates i.e. 27-07-2011, 28-07-2011, 01-08-2011 and 07-08-2011, had taken different stand in their evidence, it would be necessary to refer to the evidences of witnesses, as per the date of recording of their statement under Section 161 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'Cr.P.C.').

7. P.W.4 Ram Kumar Sharma, P.W. 5 Pervez Hayat and P.W.7 Surendra Goswami (injured) were examined by the investigating officer immediately after the occurrence on 27-07-2011. The statement of P.W.3 Rang Bahadur Singh (Police Jamadar) was recorded on 28-07-2011 during investigation under Section 161 of the Cr.P.C. The statement under Section 161 of the Cr.P.C. of P.W.8 Shashi Kant Chaudhary, P.W.10 Om Prakash Chaudhary, P.W. 11 Munna Thakur, P.W.12 Manoj Kumar Singh, P.W.13 Anil Kumar Singh and P.W.14 Santosh Kumar Chaudhary



@ Bhanu Chaudhary was recorded on 01-08-2011, whereas the statement under Section 161 of Cr.P.C. of P.W.1 Pankaj Kumar Singh, P.W.2 Manish Kumar Chaudhary and P.W.6 Mukesh Kumar was recorded on 07-08-2011. During the trial, P.W.1 Pankaj Kumar Singh, P.W.2 Manish Kumar Chaudhary (brother of the deceased), P.W.3 Rang Bahadur Singh, P.W. 4 Ram Kumar Sharma, P.W.6 Mukesh Kumar Singh, P.W.7 Surendra Goswami, P.W. 8 Shashi Kant Chaudhary (cousin brother of the deceased) and P.W.10 Om Prakash Chaudhary (brother-in-law of the deceased) were examined as eye-witnesses to the occurrence, whereas P.W.5 Pervez Hayat was examined on the point of occurrence, since at the time of occurrence, he was inside office of Krishna Rath and he was filling water in the battery and in his presence, Surendra Goswami received fire-arm injury. P.W.11 Munna Thakur and P.W.12 Manoj Kumar Singh are hearsay witness, whereas P.W.13 Anil Kumar Singh is the scribe of the written report in the case on the dictate of the informant (P.W.14). This witness has written the written report, which has been marked as Ext.3. Santosh Kumar Chaudhary @ Bhanu Chaudhary, one of the brother of the deceased, is the informant of the case, whereas P.W.9 Dr. Anil Kumar, who on 27-07-2011 was posted as Tutor, F.M.T. Department, Patna Medical College and Hospital, Patna, had



conducted *post-mortem* examination on the dead body of the deceased and P.W.15 Basgit Ram was officer incharge of the Jakkanpur Police Station on the date of occurrence and he is the investigating officer of the case. After completion of the prosecution evidence, on 10-01-2014, evidences and circumstance brought during the trial were explained to the accused persons and their statement under Section 313 of the Cr.P.C. was recorded, in which, they denied the charges and claimed that they were falsely implicated in the case. However, during the trial, no defence witness was examined.

8. Sri Surendra Singh, learned senior counsel for the appellants in all the aforesaid appeals, except Cr. Appeal (DB) No. 301 of 2015 (Kripa Shankar Singh vs State of Bihar), after referring to entire evidence, has argued that it was a case of palpably false implication and alternatively, it has been argued that prosecution has not been able to prove its case beyond all reasonable doubt. Sri Singh, by way of referring to evidence of P.W.3 Rang Bahadur Singh, who was deputed as Jamadar in Mithapur Bus stand, has emphasized that as per his evidence, in the occurrence, there was only one accused, who arrived and opened fire on the brother of the informant. He submits that this witness was examined in support of prosecution and after



examination of his evidence, the entire evidence of the prosecution comes under the cloud of doubt. He submits that this witness i.e. P.W.3 Rang Bahadur Singh was examined by the Investigating Officer on the next morning of occurrence and he categorically stated that at the time of occurrence, he had arrived bus stand in the office of the deceased and he had requested for providing a ticket for his son, who had proposed to go to Ranchi, and in his presence, one unknown accused person arrived, fired and fled away. After the occurrence, there was chaos and he immediately telephonically informed Jakkanpur Police Station and on his information, police within 15-20 minutes arrived at the place of occurrence. According to Sri Surendra Singh, learned Senior Counsel, the evidence of P.W.3 is very much specific that in the occurrence, only one unidentified accused was involved and his evidence has ruled out the presence of all the appellants at the place of occurrence as well as their participation in the occurrence.

9. Sri Surendra Singh, learned Senior Counsel for the appellants further submits that written report, which is the basis of the formal F.I.R., appears to be ante-timing. He submits that if the story made in the written report was true, there was no reason for not disclosing the name of either of the appellants by P.W.4 Ram Kumar Sharma, P.W.5 Pervez Hayat and injured P.W.7 Surendra



Goswami. It has been argued that immediately after the occurrence, the investigating officer examined those witnesses, however none of those witnesses have disclosed the name of either of the appellants, whereas in the F.I.R, name of only three appellants namely Kundan Singh (in Cr. Appeal DB No. 231 of 2015), Mantu Singh (in Cr. Appeal DB No. 193 of 2015) and Kripa Shankar Singh (in Cr. Appeal DB No. 301 of 2015) was mentioned. In the written report, name of one another accused was also mentioned as one of the assailant namely Suraj Kumar supposed to be bodyguard of Kundan Singh (appellant in Cr. Appeal DB No. 231 of 2015). This accused i.e. Suraj Kumar was neither forwarded nor he was put on trial. According to Sri Singh, learned senior counsel, the evidence of P.W.4, P.W.5 and P.W.7 creates serious doubt regarding truthfulness of the facts disclosed in the written report. Regarding the evidence of other so-called eye-witnesses, it has been argued that in their evidences, they were confronted with their previous statement recorded during investigation under Section 161 of the Cr.P.C. and on going through the evidence of those witnesses vis-a-vis evidence of investigating officer P.W.15, it is established that those witnesses appear to be not credible and on placing reliance on such witnesses, it would not be safe to approve the judgment of



conviction and sentence, particularly in view of specific evidence of P.W.3 Rang Bahadur Singh, who has deposed that in the occurrence, only one accused was participant, who was unknown. Sri Singh has also argued that the prosecution has miserably failed to establish the motive of the case. Sri Surendra Singh, learned senior counsel submits that evidence of P.W.3 creates serious doubt on the prosecution case. He submits that P.W.3 had deposed on behalf of the prosecution and his evidence goes contrary to the prosecution case. Despite the fact that this witness has stated the fact, which is contrary to the prosecution case, the prosecution neither proposed to declare him hostile nor his attention to his previous statement was drawn and as such, his evidence may not be ignored and on his evidence, this entire prosecution case may be treated as doubtful.

10. Sri Surendra Singh, learned senior counsel, by way of referring to evidence of P.W.3, submits that since he has not been declared hostile, his evidence may not be ignored and on the basis of his evidence, the entire prosecution case appears to be doubtful. On this very point, he has placed heavy reliance on a judgment of the Hon'ble Apex Court reported in **AIR 2010 SUPREME COURT 979 (Javed Masood and Anr. v. State of**



Rajasthan) and he has specifically referred to paragraph 12 and 13 of the judgment, which are quoted hereinbelow:-

“12. Suresh Kumar (PW-18) is a Police Constable who along with driver Ranjit Singh (PW-30) went in the gypsy to the spot and lifted the injured person into gypsy to take him to the hospital. He stated in his evidence that at that time except himself, driver Ranjit Singh (PW-30) and Circle Inspector nobody else was present. He specifically stated that Chuttu (PW-5), Rayees (PW-14) and Noor (PW-13) were not present at the place of occurrence at the time when he reached the scene of offence. Laxshami Narayan (PW-29) is another Policeman who corroborated the evidence of Constable Suresh Kumar (PW-18) stating that he and Constable Suresh Kumar and driver Ranjit Singh (PW-30) kept the body of the injured (deceased) in the gypsy and went to Sahadat hospital. There was crowd near the injured person but no relative of deceased was present. In the same manner Ranjit Singh (PW-30) driver of the gypsy corroborated the evidence of PW-18 and PW- 29 stating that no one was present when they have lifted the body from the scene of occurrence and placed the same in gypsy. All of them were police personnel and on duty at the relevant time. There is no reason for them to depose falsely. It is nobody's case that PWs 6, 27, 29 and 30 are not independent witnesses. There is no reason to disbelieve the evidence of PW-6 and no valid reason has been suggested as to why his evidence cannot be relied on and taken into consideration. The evidence of PW-6, if it is to be taken into consideration, makes the presence of PWs 5, 13 and 14 highly doubtful at the scene of occurrence. We do not find any reason whatsoever to discard the evidence of PW-6 who is an independent witness. He was not present at the actual scene of offence when the deceased was subjected to attack even though PW-5, in his evidence stated as if PW-6 was also present at the time of attack. But PW-6 in categorical terms stated, by the time he went to the scene of offence within a couple of minutes, the



deceased was lying dead in a pool of blood and neither PW-5 nor PWs 13 and 14 were present at the scene of offence. PW-5 is none other than the brother of deceased and a highly interested witness whose evidence was required to be carefully scrutinised and precisely for that reason we have looked into the evidence of PW-5 with care and caution. The testimony of Mohammad Ayub (PW-6) cannot easily be surmounted by the prosecution. He has testified in clear terms that PWs 5, 13 and 14 were not present at the scene of occurrence. It is not known as to why the public prosecutor in the trial court failed to seek permission of the court to declare him "hostile". His evidence is binding on the prosecution as it is. No reason, much less valid reason has been stated by the Division Bench as to how evidence of PW-6 can be ignored.

13. In the present case the prosecution never declared PWs 6,18, 29 and 30 "hostile". Their evidence did not support the prosecution. Instead, it supported the defence. There is nothing in law that precludes the defence to rely on their evidence. This court in *Mukhtiar Ahmed Ansari vs. State (NCT of Delhi)* observed:

"30. A similar question came up for consideration before this Court in *Raja Ram v. State of Rajasthan*, (2005) 5 SCC 272. In that case, the evidence of the Doctor who was examined as a prosecution witness showed that the deceased was being told by one K that she should implicate the accused or else she might have to face prosecution. The Doctor was not declared "hostile". The High Court, however, convicted the accused. This Court held that it was open to the defence to rely on the evidence of the Doctor and it was binding on the prosecution.

31. In the present case, evidence of PW1 Ved Prakash Goel destroyed the genesis of the prosecution that he had given his Maruti car to police in which police had gone to Bahai Temple and apprehended the accused. When Goel did not support that case, accused can rely on that evidence."



11. By taking aid of the aforesaid judgment, it has been argued that P.W.3 has given truthful picture of the occurrence, in which, there was only one unidentified assailant and as such, entire prosecution case appears to be not believable. He further argued that the evidence of other so-called eye-witnesses may not be relied upon, in view of the fact that they appear to be not credible. He submits that during evidence, he had stated many things, which were not stated by him during investigation under Section 161 of the Cr.P.C. He submits that on many of the points, contradictions were taken, which suggests that those witnesses are not reliable. On this very point, he has placed reliance on a judgment of the Supreme Court reported in **AIR 2012 SUPREME COURT 1249 (Sampath Kumar v. Inspector of Police, Krishnagiri)** and referred to paragraph 9 and 12 of the judgment, which are quoted hereinbelow:-

“9. In Narayan Chetanram Chaudhary & Anr. v. State of Maharashtra (AIR 2000 SC 3352), this Court held that while discrepancies in the testimony of a witness which may be caused by memory lapses were acceptable, contradictions in the testimony were not. This Court observed:

"Only such omissions which amount to contradiction in material particulars can be used to discredit the testimony of the witness. The omission in the police statement by itself would not necessarily render the testimony of witness unreliable. When the version given by the witness in the Court is different in material particulars from that disclosed in his earlier statements, the case of the prosecution become doubtful and not



otherwise. Minor contradictions are bound to appear in the statements of truthful witnesses as memory sometimes plays false and the sense of observation differ from person to person."

12. In the present case the statement made by Palani (PW7) is in complete contrast with the statement made by him before the Police where the witness stated nothing about having seen the appellants standing near the deceased around the time of the incident. This omission is of very vital character. What affects the credibility of the witness is that he did not in his version to the police come out with what according him is the truth, but withheld it for a period of five years till he was examined as a prosecution witness in the Court. This Court in *Vadivelu Thevar v. The State of Madras* (AIR 1957 SC 614) classified witnesses into three categories, namely, (i) those that are wholly reliable, (ii) those that are wholly unreliable and (iii) who are neither wholly reliable nor wholly unreliable. In the case of the first category the Courts have no difficulty in coming to the conclusion either way. It can convict or acquit the accused on the deposition of a single witness if it is found to be fully reliable. In the second category also there is no difficulty in arriving at an appropriate conclusion for there is no question of placing any reliance upon the deposition of a wholly unreliable witness. It is only in the case of witnesses who are neither wholly reliable nor wholly unreliable that the Courts have to be circumspect and have to look for corroboration in material particulars by reliable testimony direct or circumstantial."

12. Smt. Soni Shrivastava, learned counsel assisted by Sri Ram Prawesh Kumar, learned counsel for the appellant-Kripa Shankar Singh (in Cr. Appeal DB No. 301 of 2015), by way of referring to evidence of P.W.2 Manish Kumar Chaudhary and P.W.6 Mukesh Kumar, submits that the bus of the appellant Kripa



Shankar Singh was running under the banner of Krishna Rath, owner of which was the informant & the deceased, and as such, there was no point for nursing any grudge by the appellant against the deceased. She reiterates that since the bus of the appellant-Kripa Shankar Singh (in Cr. Appeal DB No. 301 of 2015) was running under the banner of Krishna Rath, of which, informant was the owner, there was no reason for involvement of the appellant. Similarly, she has referred to paragraph-17 of the cross-examination of P.W.14 (informant) to show that firstly, the bus of appellant Kripa Shankar Singh was running under the banner of Krishna Rath and in one case i.e. Patepur P.S. Case No. 83 of 2011, the informant and his brother stood as bailor on 26-07-2011 of the bus of the appellant. Similarly, in Kankarbagh P.S. Case No. 63 of 2007, the informant and his brother were bailor of the appellant (Kripa Shankar Singh). She has also elaborately emphasized that suggestion was given to the informant in paragraph-18 that in a well-planned manner, the appellant (Kripa Shankar Singh) was falsely made accused in the present case, with a view to usurp the possession of the bus of the appellant, for which, from the appellant side, a legal notice was given to the informant. Ofcourse, this suggestion was denied. She has emphasized that considering the aforesaid fact, there was no



reason for the appellant Kripa Shankar Singh (in Cr.Appeal DB No. 301/15) to be involved in the present case. Besides this, she has adopted the submission advanced by Sri Surendra Singh, learned senior counsel for the appellants in other appeals.

13. Sri Mayanand Jha, learned Addl. Public Prosecutor has vehemently opposed the appeals. He submits that it is not a case, in which, there was only one witness to the occurrence, but occurrence had taken place at wee hour in the bus stand in front of the office of the informant. At the time of occurrence, there were number of witnesses present with the deceased, who have come forward to depose regarding involvement of all the appellants and as such, merely on the ground that one of the witness i.e. P.W.3 had given a different picture, the evidence of other witnesses may not be ignored. According to Sri Jha, the ocular evidence has been supported by the medical evidence.

14. Sri Amar Nath Singh, learned counsel appearing on behalf of the informant has emphasized that in the case, P.W.1 to P.W.6, P.W.10 and P.W.14 have categorically deposed as to how accused persons came on Scorpio and thereafter, they committed the crime. He submits that taking aid of Section 149 of the I.P.C., all the appellants have rightly been convicted for commission of offence under Section 302/149 of the I.P.C. Besides this, it has



been argued that one of the injured, who was present at the place of occurrence, has also supported the prosecution case i.e. P.W.7 Surendra Goswami. P.W.7 had received gun shot injury while he was present beside the deceased. As per Sri Amar Nath Singh, learned counsel for the informant, only on the ground that P.W.3 has given different story, the entire prosecution case may not be overlooked. According to him, ofcourse reliance was placed by Sri Surendra Singh, learned senior counsel on **Javed Masood's case** (*supra*), the same judgment was subsequently considered by Hon'ble Supreme Court in a case reported in **(2011) 10 Supreme Court Cases 192 {Mohd. Imran Khan Vs. State Government (NCT of Delhi)}**. He has argued that it is true that in a case, if prosecution witness gives a different story and he is not declared as "hostile", even then, other witnesses, who are credible, are to be relied upon. He has argued that illegality or irregularity committed by the investigating agency may not be only ground for passing judgment of acquittal. The Court is required to examine entire evidence and only thereafter, conclusion is to be arrived at as to whether one is actually culprit or not. He submits that in view of specific evidence of eye-witnesses, who have supported the prosecution case showing involvement of the appellants, there is



no reason to interfere with the judgment of conviction and sentence.

15. Besides hearing learned counsel for the parties, we have minutely examined the evidence on record. Before proceeding further, it would be necessary to firstly examine as to what informant has deposed during the trial. The informant in the present case is none else, but own brother of the deceased, who has been examined as P.W.14.

16. P.W. 14 Santosh Kumar Chaudhary @ Bhanu Chaudhary in his evidence has stated that occurrence had taken place on 27-07-2011 at about 08:30 PM and at that very time, he was in the office of Krishna Rath bus situated in the Mithapur bus stand. Along with him, there were Anil Kumar Singh (P.W.13), Munna Thakur (P.W.11), Ram Kumar Shama (P.W.4), Pervez Hayat (P.W.5), Surendra Goswami (P.W.7) etc. and all were sitting there and he was calculating the accounts. At about 07:15 PM, his brother Ravi Kant Chaudhary (deceased) also came to the office and sat there. Some time after his arrival, Om Prakash Chaudhary (P.W.10), Manoj Kumar Singh (P.W.12), Shashi Kant Chaudhary (P.W.8), Pankaj Kumar Singh (P.W.1) and Mukesh Kumar (P.W.6) also arrived. Since after their arrival, there was less place in the office, they came out from the office and sat outside the office. He



and his brother Ravi Kant Chaudhary (deceased) were discussing about the account of their vehicle, at that very time at about 08:30 in the night, one white colour *Scorpio* vehicle stopped opposite to his office and from which, Kundan Singh (appellant in Cr. Appeal DB No. 231 of 2015), Kripa Shankar Singh (appellant in Cr. Appeal DB No. 301 of 2015), Mantu Singh (appellant in Cr. Appeal DB No. 193 of 2015), Balmukund (appellant no. 2 in Cr. Appeal DB No. 65 of 2015), Pappu (appellant no. 3 in Cr. Appeal DB No. 65 of 2015), Gholten (appellant in Cr. Appeal DB No. 88 of 2015), Suraj (not forwarded) and Nagina (appellant no. 1 in Cr. Appeal DB No. 65 of 2015) got down. All the accused persons were variously armed. Kundan Singh (appellant in Cr. Appeal DB No. 231 of 2015) and Mantu Singh (appellant in Cr. Appeal DB No. 193 of 2015) were carrying rifle in their hands, Kripa Shankar Singh (appellant in Cr. Appeal DB No. 301 of 2015) and Gholten (appellant in Cr. Appeal DB No. 88 of 2015) were carrying pistol in their hands. They after coming near the office, Kundan Singh (appellant in Cr. Appeal DB No. 231 of 2015) exhorted to fire, thereafter Kundan Singh by his rifle fired, Kripa Shankar Singh and Mantu Singh also fired. All the shot hit his brother Ravi Kant Chaudhary and he instantaneously died in sitting condition itself. After the murder, all the accused persons, after raising slogan “*काय*



हो गया।' (work has been done), fled away. At this juncture, it would be necessary to notice that in the written report, which is the basis of the F.I.R., the informant has disclosed the name of only four accused persons, who got down from the vehicle, whereas he stated that driver and two unknown accused persons were in the vehicle, which was in start condition. Meaning thereby that during the trial, this witness has developed a story, as if, he had seen all the appellants, who got down from the vehicle and committed the crime. This witness in paragraph - 4 of his evidence further stated that while fleeing away, Gholtan @ Ram Niwas Singh (appellant in Cr.Appeal DB No. 88 of 2015) fired from his weapon, which hit his staff Surendra Goswami (P.W.7) on his buttock. In the written report, this witness had stated that this Surendra Goswami (P.W.7) was standing beside the deceased and he received injury on his thigh. However, during the trial, he stated that Surendra Goswami (P.W.7) had received injury on his buttock. There is also contradiction on this issue. In the same paragraph, he stated that while accused persons on Scorpio started fleeing away, he could identify the registration number of the vehicle and he described entire registration number of the vehicle as BR02K-0027. It is not in dispute that occurrence had taken place at 08:30 in the night and in an occurrence, in which, brother of the informant in his



presence was done to death by fire-arm injury and accused persons started fleeing away on the vehicle, it is difficult to perceive as to under what circumstance, he was in a position to identify entire registration number of the vehicle, whereas in the written report, he had given only number as 0027. Thereafter, this witness started crying and loudly he was speaking that Kripa Shankar Singh (appellant in Cr. Appeal DB No. 301 of 2015), Kundan Singh (appellant in Cr. Appeal DB No. 231 of 2015), Mantu Singh (appellant in Cr. Appeal DB No. 193 of 2015), Balmukund (appellant-2 in Cr. Appeal DB No. 65 of 2015), Pappu (appellant-3 in Cr. Appeal DB No. 65 of 2015), Gholten (appellant in Cr. Appeal DB No. 88 of 2015), Nagina (appellant-1 in Cr. Appeal DB No. 65 of 2015), Suraj (not forwarded as accused) had killed his brother. In paragraph-5, he has further categorically stated that at the same place, he disclosed about the accused persons to Anil Kumar (P.W.13), Munna Thakur (P.W.11), Surendra Goswami (P.W.7), Ram Kumar Shamra (P.W.4), Pervez Hayat (P.W.5), Manoj Kumar (P.W.12) and they had also seen the occurrence. Thereafter, administration arrived and he described regarding entire occurrence. Thereafter, the administration asked him to say in writing and he, at the place of occurrence itself, gave written report to the administration, which was written by Anil Kumar



(P.W.13) and he identified the writing of Anil Kumar (P.W.13) and the written report was marked as Ext. 3. He also proved his signature on the written report, which was marked as Ext. 3/1. He clarified that Anil Kumar (P.W.13) had written the report, as per dictate of informant himself. In his presence, inquest report, seizure in respect of fired cartridges of rifle and blood soaked soil were prepared and on the said report, one Dilip Kumar and Sumanjay Kumar put their signature. However, both the witnesses were not examined by the prosecution. Again, it is surprising that once it is case of the prosecution that number of eye-witnesses were present at the time of occurrence, there was no reason to obtain the signature of those persons as witness to either inquest report or seizure list, but in the case, signature was obtained of two persons namely Dilip Kumar and Sumanjay Kumar, who to the reasons best known to the prosecution, were not produced by the prosecution. In his evidence, he also stated that since police had not investigated the case properly, he had filed a protest petition, which was marked as Ext. 5. This witness was contradicted with his previous statement recorded under Section 161 of the Cr.P.C. and in paragraph-7 of the cross-examination, he was asked as to whether before the police, he had stated that only Mantu (appellant in Cr. Appeal DB No. 193 of 2015) had fired and he denied that he



had not stated that Mantu (appellant in Cr. Appeal DB No. 193 of 2015), Kundan (appellant in Cr. Appeal DB No. 231 of 2015) and Kripa Shankar Singh (appellant in Cr. Appeal DB No. 301 of 2015) had given one shot each. While the investigating officer was being examined as P.W.15, his attention was drawn to this statement of P.W.14 and in paragraph-32 of the evidence of P.W.15, the investigating officer stated that Santosh Kumar Chaudhary @ Bhanu Chaudhary (P.W.14) in his previous statement before him had stated that Jamadar Sahab of O.P. was also sitting in his office and P.W.14 in his previous statement had not stated that Kundan Singh (appellant in Cr. Appeal DB No. 231 of 2015), Kripa Shankar Singh (appellant in Cr. Appeal DB No. 301 of 2015) and Mantu (appellant in Cr. Appeal DB No. 193 of 2015), all had given one shot of firing on the deceased, rather he had stated that only one person had fired three shots. This witness P.W.14 had also stated that the murder was done by the bodyguard of Kundan Singh. In paragraph-12, P.W.14 stated that with him, his deceased Ravi Kant was accused in some cases. In the same paragraph, he further accepted that he was having information that on 19-01-20011, an attempt to murder had taken place on his brother Ravi Kant and in the said occurrence, his brother had lodged a case in Jakkanpur Police Station, vide Jakkanpur P.S.



Case No. 22 of 2011 dated 19-01-2011, in which one Vijay Yadav and his gang were made accused. His deceased brother had told him that Vijay Yadav was demanding ransom of Rs. 5 lacs from him and in case of non-fulfillment, he had threatened to kill him. Again in paragraph-13, this witness stated that both the brothers were having 25 buses. Appellant Kundan Singh (in Cr. Appeal DB No. 231 of 2015) was having 15 buses. The buses of appellant Kundan Singh (in Cr. Appeal DB No. 231 of 2015) was plying in between Ranchi and Patna, whereas the buses of the informant and his deceased brother were plying in between Patna, Ranchi, Tata, Purnea, Muzaffarpur, Sitamarhi, Nawada, etc.

17. Learned senior counsel for the appellants at the time of argument had rightly argued that the motive, which was shown in the F.I.R. that there was dispute regarding timing of the buses and the permit of the buses, was meaningless, in view of the fact that buses of the appellant Kripa Shankar Singh (in Cr. Appeal DB No. 301 of 2015) and deceased were running on different routes and as such, there was no question of raising any dispute regarding timing or permit of their buses.

18. P.W.14 was further confronted with the fact in paragraph-13 that in his written report, he had not disclosed that Om Prakash Chaudhary (P.W.10), Shashi Kant Chaudhary (P.W.8),



Pankaj Kumar Singh (P.W.1), Mukesh Kumar (P.W.6) and others had also arrived there. In paragraph-14, he further accepted that in written report, he had not named Balmukund (appellant – 2 in Cr. Appeal DB No. 65 of 2015), Pappu (appellant – 3 in Cr. Appeal DB No. 65 of 2015), Gholten (appellant in Cr. Appeal DB No. 88 of 2015) and Nagina (appellant – 1 in Cr. Appeal DB No. 65 of 2015). In paragraph-15, he stated that after completion of investigation and submission of chargesheet, he had filed protest petition. Meaning thereby that if there was any apparent error in examination of any witness or incorrect investigation by the police, before submission of chargesheet itself the informant would have raised objection or filed any protest petition before the authority concerned, however; no such stand was taken. Only after submission of chargesheet, the protest petition was filed by the informant. In paragraph-18, he denied the suggestion that after death of his brother, with a view to usurp the possession of Buses of Kripa Shankar Singh (appellant in Cr. Appeal DB No. 301 of 2015), in a well-planned manner, he had implicated Kripa Shankar Singh falsely as accused in the present case. He also denied the suggestion that he was served with a legal notice regarding forcibly taking possession of the vehicle of the Kripa Shankar Singh (appellant in Cr. Appeal DB No. 301 of 2015).



19. On examination of the evidence of P.W.14 (informant), it is evident that he categorically stated that immediately after the occurrence, while he was crying, he disclosed the name of all the accused persons, ofcourse in the written report, he had disclosed the name of only four accused persons, but before the trial court, he disclosed the name of all accused persons, as if, he shoutingly was naming all the accused persons immediately after the occurrence. After the occurrence, the police arrived within 15-20 minutes and thereafter, police recorded statement of P.W.4 Ram Kumar Sharma, P.W.5 Pervez Hayat, P.W.7 Surendar Goswami, however on examination of evidence of those witnesses, it is evident that none of those witnesses have disclosed about name of any of the appellants. Had it been a case that P.W. 14 after the occurrence had disclosed the name of all the appellants, there was no difficulty for P.W.4, P.W.5 and P.W.7 to state the name of either of the appellants. This suggests that the written report was not prepared immediately, as has been claimed by the prosecution, rather it was prepared subsequently and with full advice and consultation. Initially, name of four persons were mentioned in the F.I.R.

20. P.W.4 Ram Kumar Sharma in his evidence has stated that while he was sitting with the deceased and others, he firstly



heard the sound of firing and thereafter, he concealed himself beneath the table and after few minutes, when there was no chaos, he came out, but in his evidence, he has not stated regarding participation of any of the accused persons.

21. Similarly, Pervez Hayat P.W.5 in his evidence, whose statement was recorded immediately after the occurrence, has deposed during the trial that at the time of occurrence, he was inside the office of the Krishna Rath and he was present with Surendra Goswami (P.W.7), his younger brother Afroz (not examined) & one Pappu Mistri (not examined) and he was filling water in the battery, in the meanwhile, one shot of firing hit Surendra Goswami. He further stated that within 15-20 minutes, police arrived and recorded his statement, but he has not disclosed name of any of the accused persons. Had it been a case that P.W.14 after the occurrence had disclosed name of accused persons, there was every possibility that this witness would have disclosed the name of either of the appellants. This again creates doubt on the evidence of P.W.14 (informant) as well as written report.

22. P.W.7 Surendra Goswami, whose statement was also recorded immediately after the occurrence, in his evidence has deposed that occurrence had taken place on 27-07-2011 at 8:30 PM. In the office, alongwith him Ravi (deceased), Mantu, Bhanu



(informant), Mukesh (P.W.6), Pankaj (P.W.1) and 2-5 other persons were sitting and thereafter, deceased Ravi Kant asked him to prepare tea and he went inside the office for preparing tea. Thereafter, he heard the sound of firing of 3-4 shots. While he was entering inside the office, one bullet hit his buttock. Thereafter, he came out from the office, where Bhanu (P.W.14, informant) was shouting that Kripa Singh (appellant in Cr.Appeal DB No. 301/15), Kundan Singh (appellant in Cr.Appeal DB No. 231/15), Mantu (appellant in Cr.Appeal DB No. 193/15), Pappu (appellant-3 in Cr.Appeal DB No. 65/15) and 2-4 persons had killed Ravi by gun shot injury, however; when his attention was drawn to his previous statement and in paragraph – 3 of his evidence, he denied that it is incorrect to say that he had not stated the name of Kripa (appellant in Cr.Appeal DB No. 301/15), Mantu (appellant in Cr.Appeal DB No. 193/15), Pappu (appellant-3 in Cr.Appeal DB No. 65/15) and others before the police. On this very point, while examination of investigating officer (P.W.15), it was contradicted in paragraph – 25 (at page 114 of paper book). In paragraph – 25, the investigating officer had stated that P.W.14 Surendra Goswami had not stated that he had heard the name of Kripa Singh (appellant in Cr. Appeal DB No. 301 of 2015), Mantu (appellant in Cr. Appeal DB No. 193 of 2015) and Pappu (appellant – 3 in Cr. Appeal DB



No. 65 of 2015). The injured P.W.7, though was present at the time of occurrence, had not stated true fact during the trial.

23. On the next date of the occurrence, the investigating officer had recorded statement of P.W.3 Rang Bahadur Singh, who was Jamadar and deputed in the Mithapur Bus stand. In his evidence, he stated that his son was to go to Ranchi and as such, he had gone to office of Krishna Rath. He requested deceased Ravi Kant for providing a ticket for Ranchi, in the meanwhile, one unknown young boy aged about 27-28 years arrived there and started firing on Ravi. He fired three shots. Ravi fell down immediately. Others had not received any injury. At that very time, electricity was cut, however in office, emergency light was on. Thereafter, he went to Gate No. 2 and from where, he telephonically informed the police station and thereafter, officer incharge with force arrived at the place of occurrence. During investigation, his statement under Section 164 of the Cr.P.C. was recorded and he proved the same, which was marked as Ext.1. In the dock, he categorically stated that those accused persons were not present at the time of occurrence. In cross-examination, in paragraph – 3, he stated that while he had gone for the ticket, at the time of occurrence in the office of Krishna Rath, alongwith him,



Surendra Goswami (P.W.7), Ram Kumar Sharma (P.W.4) and Pervez Hayat (P.W.5) only four persons were present.

24. On going through the evidence of P.W.3, the presence of informant and other witnesses, except P.W.4, P.W.5 and P.W.7, appears to be doubtful. This witness in specific term had stated that the occurrence was committed by a young boy aged about 27-28 years old and none else was present while committing the crime. His evidence was also clear on the point that at the time of occurrence, besides the deceased and this witness, there were other three persons namely Ram Kumar Sharma (P.W.4), Pervez Hayat (P.W.5) and Surendra Goswami (P.W.7). In the evidence of aforesaid witnesses, which we have discussed above, there is no reason to raise any finger against either of the appellants, however; during investigation, after about three days from the date of occurrence i.e. on 01-08-2011, five witnesses were examined by the investigating officer under Section 161 of the Cr.P.C. Those are P.W.8 Shashi Kant Chaudhary, P.W.10 Om Prakash Chaudhary, P.W.11 Munna Thakur, P.W.12 Manoj Kumar Singh, P.W.13 Anil Kumar Singh and P.W.14 Santosh Kumar Chaudhary @ Bhanu Chaudhary. In the case, Santosh Chaudhary (P.W.14) had submitted the written report prepared by one Anil Kumar (P.W.13), which was filed on the date of occurrence itself, but to the reasons



best known to the investigating officer, his re-statement was recorded after more than three days on 01-08-2011. P.W.14 even in his re-statement had not disclosed name of all the accused, but disclosed the name of only four accused, however during the trial, he deposed, as if, all the appellants were present in the occurrence. Besides appellants, name of one Suraj Kumar was also mentioned, but said Suraj Kumar was not forwarded as accused in the present case. Aforesaid witnesses deposed, as if, they had seen all the appellants at the time of occurrence, however; they were confronted with their previous statement recorded under Section 161 Cr.P.C. and after going through the same, it was evident that there were serious contradictions in their earlier statement as well as depositions before the court below during the trial. After more than ten days i.e. on 07-08-2011, P.W.1 Pankaj Kumar Singh, P.W.2 Manish Kumar Chaudhary and P.W.6 Mukesh Kumar Singh were examined by the investigating officer and their statement under Section 161 Cr.P.C. was recorded. Those set of witnesses, besides disclosing that all the accused persons had participated in the occurrence, had further come out with a case, as if, after committing the crime, all the accused persons raised slogan that “*work has already been done*” and thereafter, they had fled away. They were confronted with their previous statement and on



examination, it was noticed that there were serious contradictions in their previous statement as well as depositions during the trial. However, since *prima facie* we have noticed that evidence of P.W.14/informant was itself not beyond the cloud of doubt, we propose not to reiterate the evidence of all other witnesses.

25. P.Ws. 11 and 12 are hearsay witnesses, whereas P.W.13 Anil Kumar Singh is scribe of the written report and he has proved the written report i.e. basis of the F.I.R. He in his evidence stated that whatever was explained by Bhanu (P.W.14/informant), he had written and he proved the written report, which is in his writing and signature, which was marked as Ext.3. He in his evidence has deposed that he was also present with informant at the place of occurrence. This witness, after noticing the evidence of P.W.3, tried to develop the case, as if, P.W.3 Rang Bahadur Singh and P.W.4 Ram Kumar Sharma were not present, however; his attention was drawn to his previous statement. He was contradicted with his previous statement, which fact has come in paragraph -7 of his statement and he was contradicted by P.W.15 (I.O.) and in paragraph – 31, P.W.15 has stated that before the police during investigation, on 07-08-2011 Anil Kumar (P.W.13) had stated that at the time of occurrence Ram Kumar Sharma (P.W.4) and Rang Bahadur Singh (P.W.3) were present.



26. Similarly, P.W.11 Munna Thakur in his evidence tried to develop a case, as if, P.W.3 Rang Bahadur Singh and P.W.4 Ram Kumar Sharma were not present, however; he was contradicted in paragraph – 2 of his evidence and this has come in the evidence of P.W.15 (I.O.) in paragraph – 29 (at page 116 of paper-book) that before the investigating officer, this witness had stated that Ram Kumar Sharma (P.W.4) and Rang Bahadur (P.W.3) were present.

27. The examination of evidence of aforesaid two witnesses makes it clear that prosecution witnesses were bent upon to come out with a case, as if, P.W.3 and P.W.4 were not present only after noticing the fact that in their evidence, those witnesses have categorically stated that crime was committed by only one accused person.

28. In the case, the doctor, who conducted *post-mortem* examination on the dead body, was examined as P.W.9 Dr. Anil Kumar. On 27-07-2011, he was posted as Tutor in F.M.T. Department, P.M.C.H., Patna and he conducted *post-mortem* examination on the dead body in the night of the occurrence itself and he noticed following facts:-

(1) (A) Entry wound – Lacerated wound of size ½”x ½” x Cavity deep/Track deep on nose on Rt. side situated between nose & Rt. eye surrounded by Tatooing in area of 6”x6”. Margin was blackened and inverted.



(B) Exit wound – Lacerated wound of size 6"x 2½" x cavity deep/track deep on skull on left fronto-parietal and temporal region. The skull cavity was exposed open and these skull bone were blown out and absent left eye ball and brain was also absent (major portion). Some portion still present. Margin has everted. Both wound communicate each other when proped.

(2) (A) Entry wound – Lacerated wound of size 3"x 2" x Track deep on neck on right side at root situated antero laterally margin was blackened and inverted.

(B) Exit wound – Lacerated wound of size 1"x 1" x track deep on neck on right side at root situated postero-laterally margin was everted. Both wound communicate when proped.

(3) Entry wound – Lacerated wound of size 1"x ¾" x track deep/cavity deep situated 1" below right nipple on right chest and 4" right from mid line. The bullet passed to left side chest by damaging both lungs and fracturing sternum and pleres, the heart and exited on left side of chest. Antero laterally making a lacerated wound of size 1"x ½" situated 5" left from mid line and 7" below shoulder tip and again enter the left arm from its medial surface making a lacerated wound of size 1"x1" and remained impacted there after fracturing the left humerus bone. Distorted bullet was recovered from there and preserved in a glass jar, level and sealed and handed over to Constable.

Internal finding on dissection -

Cranial and spinal canal – skull cavity open due to multiple posture of skull bone on left side. Brain matter was blown/drain out and major portion of brain was absent.

Thorax – Lung – both damaged and lacerated at anterior part and bleeding were found in both plural cavity. Sternum was fractured ribs (fourth of right side and 3 and 4 on left side) also fractured.

Heart – ruptured ad all chambers were empty.

Abdomen – liver, spleen and kidney – all pale.

Stomach - rice, pulse and vegetables – semi digested form and its mucose was normal.

Urinary bladder – full.

Opinion:-

- (i) Cause of injury – all by fire arm.
- (ii) Cause of death – Haemorrhage and shock due to brain and heart injury and lung injury also.
- (iii) Time elapsed since death – within eight hours.



The doctor has proved the post-mortem report, which was marked as Ext.2.

29. On examination of the evidence of P.W.9 as well as *post-mortem* examination report, it is evident that deceased had received three entry and two exit wound caused by fire-arm, which are in consonance with the evidence of P.W.3, who in his evidence, had stated that only one person had arrived and gave three shots of firing. Meaning thereby that there were three fire-arm injuries. Moreover, in this case, injury is not in dispute.

30. In this case, most important witness is the investigating officer, who is P.W.15 Basgit Ram. On 27-07-2011, he was Inspector in the Jakkanpur Police Station and while, he was on patrolling duty, he received telephonic information that in the Mithapur Bus stand, Ravi Kant was shot dead. Thereafter, he with the patrolling party proceeded to the Mithapur Bus stand, where Bhanu Chaudhary (informant) was present. Bhanu Chaudhary was asked to give written statement. Thereafter, in his presence, inquest report was prepared by Sub-Inspector of Police Dharmeshwar Kumar, which was proved as Ext.4. He inspected the place of occurrence and from the place of occurrence, he obtained two fired cartridges of 30.6 bore and prepared a seizure list. The seizure list was signed by two witnesses namely Dilip Kumar Singh and Dev



Nath Prasad. However, both the witnesses were not produced during trial. This seizure list was marked as Ext.6. He also seized blood soaked soil and a seizure list was prepared, which was marked as Ext. 6/1. The investigating officer recorded statement of injured Surendra Goswami (P.W.7) and he prepared injury report for his treatment at government hospital. He also discussed in paragraph – 6 of his evidence regarding the place of occurrence and after investigation, he submitted chargesheet. In paragraph – 13, he stated that Jamadar Rang Bahadur Singh (P.W.3) was deputed in Mithapur Bus Stand and Rang Bahadur Singh in his statement had stated that only one person had given shot of firing. In paragraph – 15, he further stated that D.I.G. had directed to get recorded the statement of eye-witness under Section 164 Cr.P.C. and also directed to prepare sketch map of the accused persons.

31. Learned senior counsel for the appellants at the time of argument has rightly highlighted that till the arrival of the police, identification of the culprits was not known and this was the reason that Deputy Inspector General had directed the investigating officer to prepare a sketch map of the culprits.

32. In paragraph – 17, he stated that prior to 30-07-2011, in the statement of witnesses, name of accused had not come to fore and therefore, D.I.G. had given direction. His attention was



drawn to previous statement of witnesses in other paragraphs of the evidence.

33. On examination of the evidence of the investigating officer, it also appears that while after the occurrence police arrived, no one was knowing regarding actual culprit, which has further been supported by the evidence of P.W.3. This is also corroborated by the evidence of P.W.4, P.W.5 and P.W.7, whose statement was recorded immediately after the occurrence. Moreover, the evidence of P.W.3 categorically depicts that the occurrence was committed by only one accused person, who was unknown.

34. Sri Surendra Singh, learned senior counsel has rightly relied on judgment of the Apex Court in **Javed Masood's case (*supra*)** that in such case, other evidence, if it is not credible, may not be accepted.

35. Moreover, there is substance in the submission of learned senior counsel that in case of evidence of witnesses, whose statement in the Court, was completely inconsistent with their previous statement, their evidence may be considered as doubtful and on this point itself, he has placed reliance on judgment of the Supreme Court in **Sampat Kumar's case (*supra*)**.



36. So far as judgment of the Supreme Court in **Imran Khan's case (*supra*)** is concerned, on which reliance was placed by Sri Amarnath Singh, learned counsel for the informant, we are of the considered opinion that there is no difficulty in coming to the conclusion that even in a case, in which, one prosecution witness, without being declared hostile, deposes against the prosecution case and if there is no other credible evidence, then on the evidence of such witnesses, certainly benefit of doubt can be granted to the accused person, but at the same time, if evidence of other witnesses is credible, then merely on the ground that one witness had stated against the prosecution case, certainly in that situation, benefit may not be granted to the accused persons. In the present case, the very initiation of the case i.e. written report, which is basis of the F.I.R., has been noticed as 'doubtful', as if, same was not prepared immediately at the time of occurrence, which is evident from the evidence of P.Ws. 4, 5 and 7 and further corroborated by the evidence of P.W.3.

37. In view of overall facts and circumstances, we are of the considered opinion that prosecution has not been able to prove its case beyond all reasonable doubt and as such, by way of extending benefit of doubt, it is necessary to interfere with the judgment of conviction and sentence.



38. Accordingly, the judgment of conviction dated 22-12-2014 and order of sentence dated 03-01-2015 passed in Sessions Trial No. 325 of 2012/R-8286 of 2014 (arising out of Jakkanpur P.S. Case No. 208 of 2011) by Sri Satya Prakash, learned Additional Sessions Judge -VI, Patna is hereby set aside and all the aforesaid five appeals are allowed.

39. The appellant Kundan Singh {in Cr.Appeal (DB) No. 231 of 2015} and appellant Kripa Shankar Singh {in Cr.Appeal (DB) No. 301 of 2015} are in custody and since the judgment of conviction and sentence has been set aside, it is, hereby, directed to release them forthwith, if not wanted in any other case.

40. So far as appellants in other appeals are concerned, who are on bail, they are discharged from the liability of their bail-bonds.

(Rakesh Kumar, J.)

(Arvind Srivastava, J.)

Anay

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	04.10.2018
Transmission Date	04.10.2018

