

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.1171 of 2012

Arising Out of PS. Case No.-169 Year-2009 Thana- MOKAMAH District- Patna

Rajesh Singh, S/o Ramanuj Singh, Resident Of Village- Shivnar, P.S. Mokama, District- Patna.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

with

Criminal Appeal (DB) No. 1010 of 2012

Arising Out of PS. Case No.-169 Year-2011 Thana- MOKAMAH District- Patna

Ganauri Bhagat @ Ganauri Pal, son of Sri Saudagar Bhagat, resident of Village- Shivnar, P.S. Mokama, District -Patna

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

with

Criminal Appeal (DB) No. 1036 of 2012

Arising Out of PS. Case No.-169 Year-2009 Thana- MOKAMAH District- Patna

Pawan Devi, wife of Birndra Pal resident of village & Post Office – Shivnar Police Station Mokama, District Patna

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

with

Criminal Appeal (DB) No. 1095 of 2012

Arising Out of PS. Case No.-169 Year-2009 Thana- MOKAMAH District- Patna

Birendra Pal, S/o Ramautar Mahto, resident of village + P.O. Shivnar P.S. Mokama District Patna

... .. Appellant/s

Versus

The State Of Bihar



... .. Respondent/s

Appearance :

(In Criminal Appeal (DB) No. 1171 of 2012)

For the Appellant/s : Sri Bakshi S.R.P. Sinha , Sr. Adv.
Sri Sanjeev Verma , Adv.
Sri Pramod Kumar, Adv.

For the Respondent/s : Sri Ajay Mishra, A.P.P.

(In Criminal Appeal (DB) No. 1010 of 2012)

For the Appellant/s : Sri Bakshi S.R.P. Sinha, Sr. Adv.
Sri Sanjeev Verma, Adv.

For the Respondent/s : Sri Ajay Mishra, A.P.P.

(In Criminal Appeal (DB) No. 1036 of 2012)

For the Appellant/s : Sri Bakshi S.R.P. Sinha, Sr. Adv.
Sri Sanjeev Verma, Adv.

For the Respondent/s : Sri Ajay Mishra, A.P.P.

(In Criminal Appeal (DB) No. 1095 of 2012)

For the Appellant/s : Sri Bakshi S.R.P. Sinha, Sr. Adv.
Sr. Sanjeev Verma, Adv.

For the Respondent/s : Sri Ajay Mishra, A.P.P.

CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

and

HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAKESH KUMAR)

Date : 06-08-2018

1. In all the aforesaid four appeals appellants were tried together in Sessions Trial No. 1722 of 2010 and convicted and sentenced by common judgment and as such aforesaid all Appeals were heard together and are being disposed of by this common judgment. By judgment of conviction dated 19th September, 2012 appellant- Rajesh Singh [CR. APP. (DB) No. 1171 of 2012] and appellant – Ganauri Bhagat @ Ganauri Pal [CR. APP (DB) No. 1010 of 2012] were convicted under Section 302/34 of the Indian Penal Code, 1860 (hereinafter referred to as the “I.P.C.”) and Section 27 of the Arms Act, 1959 (hereinafter referred to as the “Arms Act”) whereas appellant - Pawan Devi [CR. APP (DB) No.



1036 of 2012] and appellant - Birendra Pal [CR. APP (DB) No. 1095 of 2012] were convicted for offence under Section 302/34 read with Section 120B of the I.P.C. By order dated:- 22.09.2012 unde Section 302/34 appellant -Rajesh Singh and Ganauri Bhagat @ Ganauri Pal were sentenced to undergo imprisonment for life and to pay a fine of Rs. 10,000/- each and under Section 27 of the Arms Act they were sentenced to undergo rigorous imprisonment for three years. Appellant- Birendra Pal and Pawan Devi were sentenced to undergo imprisonment for life under Section 302 / 34 read with Section 120B of the I.P.C. and to pay a fine of Rs. 10,000/- each. In case of default of payment of fine the appellants were directed to further undergo rigorous imprisonment for six months. All the sentences were directed to run concurrently. The judgment of conviction and sentence was passed by Sri Om Prakash - 2, learned Additional Sessions Judge - 4th , Barh, Patna (hereafter referred to as the “trial judge”) in Sessions Trial No. 1722 of 2010 arising out of Mokama P.S. Case No. 169 of 2009.

2. Short fact of the case is that on 13.09.2009 at 20.00 Hours (8.00 P.M.) the Sub Inspector of Police Sri S.K. Rajak (not examined) recorded fardbyan of Sanjay Prasad (P.W. 3) - son of the deceased. The fardbyan was recorded in Nazarat Hospital, Mokama. In the fardbyan the informant disclosed that on the same



day i.e. 13.09.2009 at about 6.30 P.M. (evening) his father Sakaldip Prasad (deceased) was returning after dropping co-villager Ameen Sri Brijnandan Singh to his residence. When it was late the informant came out in search of his father and saw Rajesh Singh [appellant in CR. APP (DB) No. 1171 of 2012] carrying 'Nalkatti' (country made pistol) in his hand with one of his friend had surrounded his father and with intent to kill Rajesh Singh gave one shot of firing on his father whereupon his father asked as to what he had done and thereafter he fell down. In the meanwhile by putting the country made pistol on left temporal region of his father he gave second shot of firing. The informant thereafter raised alarm and with villagers ran, both the accused persons fled away. He claimed to identify the second accused who had fled away. The accused fled towards Southern side. The reason for the occurrence was explained by the informant that with his uncle -Birendra Pal [appellant in CR. APP (DB) No. 1095 of 2012] land dispute was going on and due to the said reason Birendra Pal conspiring with his wife Pawan Devi [appellant in CR. APP (DB) No. 1036 of 2012] Sudesh, Udesb Pal and Dhiraj - all sons of Birendra Pal and two-three unknown persons had killed his father. He further stated that in the village since 2-3 days there was rumor that Rajesh Singh [appellant in CR. APP (DB)



No. 1171 of 2012] was paid money by Birendra Pal [appellant in CR. APP (DB) No. 1095 of 2012] . The informant further claimed that the occurrence was witnessed by Arjun Pal @ Prasad (P.W. 2), Bijay Kumar (P.W. 1) and other villagers of village- Shivnar who will explain on being asked. The informant put his signature on the bottom of the fardbyan after it was read over and explained to him in presence of villager – Bijay Kumar (P.W.1).

3. After recording fardbyan on the same day i.e. on 13.09.2009 at 11.30 P.M. a formal F.I.R. vide Mokamah P.S. Case No. 169 of 2009 was registered for offence under Section 302, 120B , 34 of the I.P.C. and Section 27 of the Arms Act against :- (1) Rajesh Singh [appellant in CR. APP (DB) No. 1171 of 2012], (2) Birendra Pal [appellant in CR. APP (DB) No. 1095 of 2012], (3) Pawan Devi, wife of Birendra Pal [appellant in CR. APP (DB) No. 1036 of 2012], (4) Sudesh, (5) Udes, (6) Dhiraj:- all three sons of appellant Birendra Pal. After registering F.I.R. case was investigated and on 08.12.2009 charge sheet was submitted against appellant – Birendra Pal and Pawan Devi keeping investigation pending against others and thereupon, on 10.12.2009 learned Additional Chief Judicial Magistrate, Barh took cognizance of the offence. In the case on 07.04.2010 supplementary charge sheet was submitted against Rajesh Singh



[appellant in CR. APP (DB) No. 1171 of 2012] and Ganauri Bhagat @ Ganauri Pal [appellant in CR. APP (DB) No. 1010 of 2012] keeping investigation open against others. On 31.08.2010 the case was committed to the court of Sessions and thereafter, on 03.01.2011 jointly charge was framed under Section 302/34, 120B/34 of the I.P.C. and Section 27 of the Arms Act.

4. During the trial to establish its case from the prosecution side altogether eight witnesses were examined. Out of eight witnesses the P.W. 3- is the son of the deceased and he has claimed to be eye witness. Similarly, P.W. 1 (Bijay Kumar) -cousin of the informant , P.W. 2 (Arjun Pal @ Prasad) and P.W. 5 (Mukesh Kumar)-brother of the informant and son of the deceased were also examined as eye witnesses to the occurrence whereas P.W. 4 (Rajesh Prasad) is hearsay witness and also on the point of conspiracy. Dr. Wasimuddin (P.W. 7) had conducted post -mortem examination on the dead body of the deceased. One Manorama Devi (Mukhiya) was examined as P.W. 8 who did not support the prosecution case and she was declared hostile. Sri Nityanand Shukla is the Investigating Officer and he was examined as P.W. 6. During evidence, P.W. 1 (Bijay Kumar) proved his signature on the inquest report, which was marked as Ext. 1. P.W. 3 Sanjay Prasad (informant) proved his signature on



fardbyan, which was marked as Ext. 1/1 and he also proved his signature on the inquest, which was marked as Ext. 1/2. He further proved the protest petition which was filed by him during investigation and was marked as Ext. 2. P.W. 6 (Nityanand Shukla)- Investigating Officer has proved fardbyan, which was recorded by one Sub Inspector of Police Sri S.K. Rajak, who was not examined, however he proved the same, which was marked as Ext. 3. Inquest report was proved by him and it was marked as Ext. 4. Surprisingly, entire case diary was also got exhibited in the case and same was marked as Ext. 5 and supplementary case diary was also marked as Ext. 5/1. P.W. 7 who conducted post – mortem examination has proved the post-mortem examination report which was marked as Ext. 6. After closure of prosecution evidence on 15.05.2012 statement of accused under Section 313 of the Cr.P.C. was recorded in which all the appellants claimed to be innocent.

5. Sri Bakshi S.R.P. Sinha, learned senior counsel, assisted by Sri Sanjeev Verma , learned counsel for appellants by way of referring to entire evidences has argued that on the basis of minute examination of the evidences it is evident that prosecution has not come out with its clean hands, rather it was a case of false implication due to old animosity in between the informant's side as



well as all the appellants. He has argued that the appellant – Birendra Pal is the own uncle of the informant of the present case, who has been examined as P.W. 3. By way of referring to the fardbyan he submits that in the fardbyan itself the informant has disclosed the reason for the occurrence i.e. old land dispute. Sri Bakshi S.R.P. Sinha, learned senior counsel has highlighted that it is a peculiar case in which though conspiracy for commission of offence is always hatched in confidence but prosecution has come out as if the conspiracy was publicly hatched. It was not a result of conspiracy rather it was publicity. This was the reason that witnesses who are none else but close relatives of the informant and deceased have deposed even to the extent that some of the witnesses had seen that Rs. 50000/- amount was given to appellant- Rajesh Singh [appellant in CR. APP (DB) No. 1171 of 2012] for killing the father of the informant. He has argued that such prosecution story on its face appears to be improbable, rather absurd. Number of prosecution witnesses during trial have deposed as if Pawan Devi [appellant in CR. APP (DB) No. 1036 of 2012] had publicly said that ‘*supari*’ amount has already been given to Rajesh Singh for eliminating the father of the informant. By way of referring to the evidence of informant / P.W. 3 as well as evidence of P.W. 2 it has been argued that presence of informant



at the place and time of occurrence itself appears to be doubtful. By way of referring to paragraph - 4 of evidence of P.W. 2 it has been argued that P.W. 2 /Arujun Pal @ Prasad [own nephew of the deceased] has stated that he had seen the occurrence from a very close distance and at the time of occurrence except him none was present. Only after the occurrence other villagers and witnesses arrived there. However, P.W. 3 (Sanjay Prasad) - son of the deceased and informant of the case, deposed as if he had seen the occurrence from close range. Sri Bakshi S.R.P. Sinha, learned senior counsel for the appellants has further argued that the story of the informant that he had gone in search of his father also appears to be doubtful. In the evidence the informant deposed that his father had gone to drop Brijnandan Singh -Ameen to his house and he stated that since it was late he had gone in search of his father. According to Sri Bakshi S.R.P. Sinha in this case occurrence had taken place at 6.30 P.M. and it was not late night and as such the very stand taken by the informant that he had gone in search of his father appears to be not believable. Learned senior counsel for the appellants further submits by way of referring to fardbyan as well as evidence of P.W. 3 in paragraph - 20 of his cross examination that informant has stated that after his arrival in Nazarath hospital he stayed there for about 5 hours waiting for the



Police and after arrival of Police the case was instituted. However in the case alleged occurrence had taken place at 6.30 P.M. and fardbyan was shown to be recorded at 8.00 P.M. This suggests that the fardbyan was recorded after full thought by the informant with discussion and suggestion of others and thereafter a story was built up as if the informant had seen appellant /Rajesh Singh committing occurrence with one unknown accused persons.

6. Learned senior counsel for the appellants further submits that even after recording of fardbyan and lodging of First Information Report, it appears that prosecution has further developed the case as if the second unknown accused person was non else but appellant – Ganauri Bhagat @ Ganauri Pal of CR. APP (DB) No. 1010 of 2012. It has been argued that the informant in his fardbyan is very much specific that at the time of occurrence he could identify Rajesh Singh as assailant with one unknown accused person. Even in his statement recorded under Section 161 of the Cr.P.C. he has not disclosed the name of the second unknown person. After some time during investigation it is evident that a protest petition was also filed by the informant that too does not contain the name of Ganauri Bhagat @ Ganauri Pal. In the protest petition also the informant has not disclosed the name of the second accused person. The protest petition was got



exhibited as Ext. 2. Sri Baksi S.R.P. Sinha, learned senior counsel for the appellants has specifically referred to the protest petition to show that at the time of filing of protest petition, which was dated: 31.10.2009 name of second unknown person was not mentioned. It is admitted case of the prosecution that appellant / Ganauri Bhagat @ Ganauri Pal was resident of the same village and known to the informant and all the witnesses of the prosecution side and as such non- mentioning of the name of accused / Ganauri Bhagat @ Ganauri Pal in the fardbyan, in the statement recorded under Section 161 of the Cr.P.C. and also in the protest petition categorically indicates that after fabricating fardbyan at later stage name of appellant /Ganauri Bhagat @ Ganauri Pal was also introduced that too during the trial by the witnesses.

7. Sri Bakshi S.R.P. Sinha, learned senior counsel for the appellants by way of referring to the evidence in paragraph - 20 of the cross -examination of P.W. 3 (Sanjay Prasad) has argued that the conduct of the informant appears to be not natural since in his evidence he has accepted that from the place of occurrence Nazarat hospital, where the injured was brought, was at a distance of about 2 K.M. and he further stated that Police Station was 1 ½ K.M. from the place of occurrence even then though the injured after being brought to Nazarat hospital was declared dead,



without any rhyme or reason the informant remained present in hospital for about five hours waiting for the Police. In normal course either immediately after the occurrence or even after the injured was declared dead in hospital the informant himself or through any other person could have immediately informed the Police regarding the occurrence but they were waiting for the Police and Investigating Officer i.e. P.W. 6 in his evidence has deposed that on hearing rumor of murder he firstly reached at the place of occurrence and thereafter he went to the hospital and recorded fardbyan. Besides this non-finding of blood mark at the place of occurrence also suggests that prosecution has miserably failed in establishing the place of occurrence. He submits that informant /P.W. 3 in paragraph- 20 of his cross examination has categorically stated that after the occurrence at the place of occurrence blood had fallen and from the place of occurrence to National Highway blood from the injured had percolated and there was sign of blood mark, however the Investigating Officer in his evidence has stated that he had not noticed any blood mark.

8. Sri Bakshi S.R.P. Sinha, learned senior counsel for the appellants by way of referring to evidences has further argued that the deceased was having number of enemies since after being retired as Engineer he was in the habit of measuring lands



for settlement of dispute of other villagers and as such it appears that the deceased was done to death by some unknown persons and after finding the dead body with a view to implicate his own uncle and his whole family the informant has come out with a case that appellant / Birendra Pal and his whole family had hired the appellant/Rajesh Singh on payment of Rs. 50000/- for killing the deceased. Regarding false implication in respect of appellant -Rajesh Singh [appellant in CR. APP (DB) No. 1171 of 2012] evidence of P.W. 3 / Sanjay Prasad in paragraph -21 of his cross examination has been referred wherein it was indicated by the informant that in dispute in between deceased and appellant /Birendra Pal, Rajesh Singh was taking side of appellant /Birendra Pal. Meaning thereby, that right from the very beginning Rajesh Singh was considered as enemy of the informant and deceased and as such there is possibility of false implication of Rajesh Singh in the present case otherwise animosity in between informant's side and appellant / Birendra Pal and his whole family member is evident.

9. While referring to the evidences it has also been argued that though it is case of the prosecution that father of the informant was done to death in the evening at 6.30 P.M. none of the independent witnesses has come forward to support the



prosecution case, rather one of the witnesses who was Mukhiya of the village namely, Manorama Devi though was cited as P.W. 8 considering the fact that it was a case of false implication, did not support the prosecution case and she was declared as hostile witness.

10. On the aforesaid grounds it has been argued that it is a case of clean acquittal. Learned senior counsel for the appellants has also argued that since prosecution has miserably failed to establish the conspiracy part there was no motive for the appellant /Rajesh Singh to kill the father of the informant. According to Sri Bakshi S.R.P. Sinha , learned senior counsel for the appellants in absence of motive as well as truthful witnesses certainly there was no question of application of Section 302 of the I.P.C.

11. Sri Ajay Mishra, learned Additional Public Prosecutor at the very outset has argued that in case of direct evidence motive has got no much relevance. He submits that P.W. 1 (Bijay Kumar), P.W. 2 (Arujun Pal @ Prasad), P.W. 3 (Sanjay Prasad)- informant and P.W. 5 (Mukesh Kumar) are ocular witnesses and their evidence is consistent particularly on the point that the appellant /Rajesh Singh had given two shots of firing on the deceased causing his death. Accordingly, even though



prosecution might have failed to establish the case of conspiracy, considering the fact that there is direct evidence against Rajesh Singh he may not be absolved from the prosecution case. So far the case of other appellants is concerned, he was feeling difficulty in opposing those Appeals.

12. Besides hearing learned counsel for the parties, we have examined entire evidence both oral and documentary evidence and after going through the entire evidence *prima facie* we are satisfied that appellant /Ganauri Bhagat @ Ganauri Pal in CR. APP (DB) No. 1010 of 2012 , Pawan Devi [appellant in CR. APP (DB) No. 1036 of 2012] and Birendra Pal [appellant in CR. APP (DB) No.1095 of 2012] deserve clean acquittal. So far appellant /Rajesh Singh is concerned, considering the evidence of witnesses claiming to be eye witness as if the appellant / Rajesh Singh was main assailant appears to be not believable since the witnesses are not truthful and as such Rajesh Singh can be given benefit of doubt. However before recording finding it would be necessary to cursorily examine the evidences.

13. P.W. 3 (Sanjay Prasad) who is non else but the son of the deceased has been examined as eye witness to the occurrence. In his fardbyan i.e. Ext. 3 he has claimed to be eye witness to the occurrence in which two gun shot injury was given



by the appellant/ Rajesh Singh and father of the informant, he had seen, was intercepted by appellant /Rajesh Singh and one unknown accused person. This witness has also proved the protest petition which was marked as Ext. 2 and in the protest petition he had made some complaint against the Investigating Agency but he had not whispered the name of the second accused. However during trial he deposed as if he was knowing second accused by his name as Ganauri Bhagat @ Ganauri Pal [appellant in CR. APP (DB) No. 1010 of 2012]. It has also come in evidence that this appellant is the resident of the same village and as such there was no reason for the informant not to identify him at the time of occurrence itself. Had he been involved in the occurrence as one of the accused his introduction with name at much belated stage raises question on the credibility on the evidence of P.W. 3 / informant. P.W. 3 in his evidence has stated that occurrence had taken place on 13.09.2009 at 6.30 P.M. He stated that he along with Arjun (P.W. 2) was going in search of his father Sakaldeep Prasad (deceased) and when they reached near the house of one Indradeo Mishra about ten steps ahead he saw that Ganauri Pal [appellant in CR. APP (DB) No. 1010 of 2012] and Rajesh Singh [appellant in CR. APP (DB) No. 1171 of 2012] had surrounded his father. Rajesh Singh with country made pistol gave one shot



of firing on the left side of his father's stomach which hit him whereafter his father asked as to what wrong he had done and by speaking such words he fell down. Rajesh Singh gave second shot of firing which hit on left side of the forehead. P.W. 3 further deposed that appellant /Ganauri Pal carrying pistol in his hand was threatening them and thereafter they fled away towards Southern side. This witness further deposed that he, Bijay (P.W. 1), Rajesh Prasad (P.W. 4), Arjun Pal (P.W. 2), Mukesh (P.W. 5), Ram Sagar (not examined) and other villagers had seen the occurrence. Thereafter they carried their father on a tempo and moved to Mokama Nazarat Hospital where doctor declared him dead. There Police arrived and recorded his fardbyan which was read over to him and thereafter he asked the Police that he had left the name of Ganauri Pal. Statement of this witness creates serious doubt on his evidence. Had it been done by the Police Officer who had recorded the fardbyan leaving the name of Ganauri Pal in his statement recorded under Section 161 of the Cr.P.C. firstly he would have stated his name and thereafter once he had filed protest petition that too after number of days of the date of fardbyan certainly in such situation he would have given the name of Ganauri Pal, however till filing of the protest petition he had not whispered about the name of Ganauri Pal. At the time



of his evidence before the court he is taking a plea as if he had taken objection before the Police regarding non -mentioning of the name of Ganauri Pal. He has proved his signature on the fardbyan, which was marked as Ext. 1/1. He also proved signature on the inquest report which was marked as Ext. ½. P.W. 3 further deposed that the reason for the occurrence was that there was land dispute in between his uncle Birendra Pal [appellant in CR. APP (DB) No. 1095 of 2012] and his father { deceased}. He further deposed that Birendra Pal, Pawan Devi, Sudesh Kumar, Udesb Kumar and Dhiraj Kumar repeatedly were threatening for killing his father and 2-3 days prior to the occurrence some dispute had arisen and thereafter Birendra Pal [appellant in CR. APP (DB) No. 1095 of 2012] stated that he had also given Rs. 50000/- to Rajesh Singh, to kill his father. He further deposed that Rajesh Prasad (P.W. 4) had informed his father that he had seen handing over of Rs. 50000 /- to Rajesh by Ganauri Pal, Birendra Pal etc. He further stated that against Police he had filed protest petition which was typed by one Randhir Kumar Singh and it was proved as Ext. 2. In paragraph no. 2 of his cross examination he deposed that he was knowing Ganauri Pal [appellant in CR. APP (DB) No.1010 of 2012] since his childhood. He further stated that in village relation he was his



brother. Ramawatar Pal was his Baba [grand father] who was having three sons namely: Sakaldip Pal (deceased), Chandrika Pal and Birendra Pal [appellant in CR. APP (DB) No. 1095 of 2012] . Meaning thereby that appellant /Birendra Pal is the own uncle of the informant and own brother of the deceased. He further accepted that Mukesh Prasad (P.W. 5) is his own brother, Bijay Mahto (P.W. 1) and Neeraj Mahto (not examined) were sons of Chandrika Pal. Pawan Devi [appellant in CR. APP (DB) No. 1036 of 2012] is the wife of Birendra Pal and Sudesh Pal , Udesch Pal and Dhiraj Pal were sons of Birendra Pal [appellant in CR. APP (DB) No. 1095 of 2012] . It is necessary to indicate that even three sons of Birendra Pal [appellant in CR. APP (DB) No.1095 of 2012] were also arrayed as conspirators in the present case. Meaning thereby, that that entire family of appellant /Birendra Pal were arrayed as accused by the informant. P.W. 3 in the present case in paragraph -4 of his cross examination further deposed that in dispute villagers were calling his father. Sri Bakshi S.R.P. Sinha, learned senior counsel taking clue from paragraph -4 of the the cross examination of P.W. 3 has argued that it appears that the deceased since was active in settlement of dispute in the village there was possibility of his murder by some unknown persons. This witness has denied the suggestion that his



father had taken election duty in the Panchayat election and he had committed several irregularities in the Panchayat election. He in paragraph -6 of his cross examination has further stated that since Daroga Ji had left the name of Ganauri Pal in protest petition he had described every fact and also mentioned the name of Ganauri Pal. His attention was also drawn to his previous statement recorded under Section 161 of the Cr.P.C. and in paragraph -9 of his cross examination his attention was drawn that he had not stated to identify the another accused amongst two accused nor he had identified him. To this effect contradiction was also drawn which is evident from the evidence of Investigating Officer (PW. 6). Meaning thereby that in his Section 161 Cr.P.C. statement also he had not disclosed the name of the second person, however subsequently during the trial he has disclosed the name of Ganauri Bhagat @ Ganauri Pal as the second person along with Rajesh Singh. On examination of his evidence it appears that he is not truthful witness and as such it is difficult to place reliance on his evidence. In the evidence of P.W. 3 he stated as if he along with Arujn Pal (P.W. 2) had gone in search of his father and thereafter he had seen the occurrence. However, on examination of the fardbyan it is evident that there was no whisper by the informant that he along with P.W. 2 had



gone to search his father, rather in his fardbyan he has categorically stated that he himself had gone to search for his father. Meaning thereby that during evidence again he developed the case.

14. On examination of the protest petition i.e. Ext. 2 it is evident that in paragraph no. 3 he had arrayed Ganauri Pal as one of the conspirators and in paragraph- 6 of the protest petition he has clarified that fardbyan was registered against Rajesh Singh and five others (though Ganauri Pal has not been written in the F.I.R.). This categorically demonstrates that Ganauri Pal in the protest petition which was filed even much belatedly on 31.10.2009 was arrayed as only conspirator not an accused in the execution of the murder with Rajesh Singh [appellant in CR. APP (DB) No.1171 of 2012].

15. In similar manner, P.W. 1 (Bijay Kumar), P.W. 2 (Arjun Pal @ Prasad) and P.W. 5 (Mukesh Kumar) have deposed.

16. P.W. 2 (Arjun Pal @ Prasad) has also deposed almost like P.W. 3. Meaning thereby that he has deposed that he along with P.W. 3 / Sanjay Prasad had seen that his father was surrounded by appellant /Rajesh Singh and appellant /Ganauri Pal and he further stated that after the deceased fell down he moved



to save his father. He deposed that along with him Sanjay (P.W. 3), Bijay (P.W. 1), Rajesh Pal (P.W. 4) and Mukesh Pal (P.W. 5) had also seen them. The Investigating Officer at the time of examination in his evidence stated that P.W. 2 (Arjun Pal @ Prasad) had not stated in his statement under Section 161 Cr.P.C. that he along with others proceeded to save the deceased and occurrence was seen by Bijay Pal, Rajesh Pal, Ram Sagar Pal and Mukesh Pal. In paragraph -4 of his cross examination he has given description that from about a distance of one hand the accused had surrounded his (informant) father and back of his father was in Southern side. The deceased was about ten steps on the Northern side. Ganauri Pal had surrounded his father for about 4-5 minutes and during that period there was no one except P.W. 2. He stayed at the place of occurrence for about ten minutes. Thereafter the deceased was carried to hospital. In view of this evidence of P.W. 2 presence of P.W. 3 (Sanjay Prasad) from the beginning of the occurrence appears to be doubtful.

17. P.W. 4 (Rajesh Prasad) was examined as hearsay witness since at the time of occurrence he was not present there and after hearing the sound of firing he reached at the place of occurrence and saw that Sakaldeep Prasad (deceased) was lying in pool of blood and thereafter from the witnesses who were present



there he came to know that deceased was given two shots of firing by Rajesh Singh. He also stated regarding land dispute in between the parties. He deposed particularly on the point that about two days prior to the occurrence Rajesh Singh [appellant in CR. APP (DB) No. 1171 of 2012] had gone to the house of Birendra Pal [appellant in CR. APP (DB) No. 1095 of 2012] at about 12.00 noon. He also had gone to the house of Birendra Pal (appellant). He saw that Birendra Pal, Pawan Devi , Sudesh, Udes, Dhiraj had given Rs. 50000/- to Rajesh Singh and had said that Sakaldeep Prasad must be killed and thereafter Rajesh [appellant in CR. APP (DB) No. 1171 of 2012] assured that within 1-2 days he will finish the father of informant. On examination of this evidence there is no difficulty to observe that such story is simply absurd which can not be believed. This suggests that prosecution was bent upon to fabricate a false case for wreaking vengeance relating to land dispute.

18. P.W. 7 (Dr. Wasimuddin) at the relevant time i.e. on 14.09.2009 was posted as Medical Officer at Sub Divisional Hospital, Barh and he conducted post -mortem examination on the dead body of Sakaldip Prasad, father of informant and found following ante -mortem injuries:-

“(i) Entry wound – lacerated wound about 1/2”x1/4”x abdominal cavity deep on the left



umbilical area of anterior wall of abdomen. Charring was present, margin was inverted.

Exit wound – lacerated wound about 1"x1/2"x abdominal cavity deep on the left side of back margin was everted.

Both injuries was communicating to each other.

(II) Lacerated wound 1"x1/2" x brain deep on the left side of frontal region of skull. Margin was inverted. Charring around it- wound of entry

Internal – Head – skull – fracture of left side of frontal bone with fracture of right temporo parietal bone.

brain – pale and lacerated bullet was lodged on the right temporo parietal region of skull. 1 bullet was kept preserved.

neck – intact

chest – All ribs intact

Lungs – pale

heart – both side empty abdomen- stomach ruptured and contain digested food.

Spleen – ruptured and abdominal cavity contained blood.

All viscera – pale . Limbs intact

Time since death – within 24 hours.

Cause of death – acute circulatory failure due to trauma and haemorrhage on head and abdomen caused by fire arm injury. Rigor mortis was present."

He proved the post -mortem examination report, which

was marked as Ext. 6.

19. The Investigating Officer/ Nityanand Shukla (P.W. 6)

in his evidence has proved the fardbyan, which was marked as Ext.

3 and Inquest report [Ext. 4]. Surprisingly he also proved the

entire case diary as Ext. 5 and supplementary case diary as Ext.

5/1. The Investigating Officer at running page - 63 of Paper

Book in his evidence has categorically deposed that he had not

noticed blood mark at the place of occurrence. In his evidence at

internal page 6 Paper Book page - 63 has stated that in the



description of the place of occurrence he had not described regarding finding of blood mark at the place of occurrence. He further deposed that he had recorded statement of seven witnesses who were resident of nearby place of occurrence, however none had claimed that occurrence had taken place in their presence. This substantiates the stand taken by learned senior counsel for the appellants that it appears that actual murder had taken place somewhere else and dead body was found near the so-called place of occurrence otherwise, Investigating Officer who inspected the place of occurrence would must have recorded that he had noticed blood mark at the place of occurrence.

20. In the case only one independent witness was cited as prosecution witness who was none else but Mukhiya namely- Manorama Devi, who was examined P.W. 8. She simply deposed that she was not knowing about the murder of Sakaldip and as such she was declared as hostile witness and her attention to her previous statement particularly on the point of payment of conspiracy amount was drawn.

21. On examination of entire evidences there is no difficulty to record that it is a fit case for passing order of acquittal in respect of appellant /Ganauri Bhagat, Pawan Devi and Birendra Pal since the prosecution has miserably failed to establish



a case to show their role in conspiracy of the occurrence. Accordingly, aforesaid appellants deserve to be acquitted. So far appellant/ Rajesh Singh is concerned, considering the fact that witnesses who have claimed to be eye witness to the occurrence and all the eye witnesses are none else but close relatives of the deceased certainly their evidences were required to be examined carefully. On careful examination of their evidences as discussed here-in-above they appear to be not truthful witnesses since from the inception of the case it was stand of the prosecution that in the occurrence appellant/Rajesh Singh was identified with one unknown accused person. However subsequently unknown accused person was introduced as Ganauri Pal who was co-villager and in respect of whom, witnesses have said that he was known to them since childhood. In such a situation if witnesses in dock comes and depose that they had identified him at the time of occurrence, this raises a big question as to under what circumstances once all the witnesses had seen the occurrence why his name was not inserted in the fardbyan which was recorded, as claimed by the prosecution, within 1 ½ hours from the time of occurrence. Moreover, the time of recording of fardbyan also appears to be doubtful due to the reason that witnesses particularly informant /P.W. 3 is very much specific that after the occurrence



he carried the injured to Nazarat hospital and there he stayed for about five hours waiting for the Police and after arrival of Police his fardbyan was recorded. Once alleged occurrence had taken place at 6.30 P.M. and they stayed in hospital for about five hours, there was no reason to incorporate the time of writing / recording of fardbyan as 8.00 P.M. This also creates serious doubt on the prosecution case. Besides this, in a case in which witnesses deposed that at the place of occurrence they had noticed blood mark and also noticed mark of blood which percolated from the place of occurrence to the National Highway, non- finding of any mark or non -mentioning of blood mark by the Investigating Officer also raises serious doubt regarding the actual place of occurrence .

22. In sum and substance, the prosecution has not established its case beyond all reasonable doubt even against the appellant/ Rajesh Singh and by way of extending benefit of doubt he deserves to be acquitted. Accordingly, the judgment of conviction and sentence dated – 19.09.2012 / 22.09.2012 respectively passed in Sessions Trial No. 1722 of 2010 arising out of Mokamah P.S. Case No. 169 of 2009 by Sri Om Prakash – II, learned Addl. Sessions Judge -IV , Barh, Patna is hereby set aside and all the aforesaid four Appeals are allowed. Except appellant/



Rajesh Singh all remaining three appellants are on bail and as such after setting aside of the judgment of conviction and sentence they are discharged from liability of their bail bond.

23. The appellant/ Rajesh Singh in CR. APP (DB) No. 1171 of 2012 is in jail and as such after setting aside of the judgment of conviction and sentence it is desirable to direct for his immediate release. Accordingly, he is directed to be released forthwith, if not wanted in any other case.

(Rakesh Kumar, J)

(Arvind Srivastava, J)

praful/-

AFR/NAFR	AFR
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