

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.649 of 2013

Arising Out of PS. Case No.-59 Year-2008 Thana- SAHAR District- Bhojpur

Anand Singh, Son of Baban Singh, Resident of Village- Barki Kharaun, P.S.-
Sahar, District- Bhojpur (Arrah)

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

with

Criminal Appeal (DB) No. 597 of 2013

Arising Out of PS. Case No.-59 Year-2008 Thana- SAHAR District- Bhojpur

1. Manoj Singh
2. Rajo Singh

Both sons of Late Dipan Singh @ Dip Narayan Singh, Resident
of Village Barki Kharaon, P.S. Sahar in the District of Bhojpur.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

with

Criminal Appeal (DB) No. 561 of 2013

Arising Out of PS. Case No.-59 Year-2008 Thana- SAHAR District- Bhojpur

Bela Singh, S/O Late Siyaram Singh, Resident of Village- Badki Khadawn
(Anchal) Sahar, P.S.- Sahar, District- Bhojpur

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with

Criminal Appeal (DB) No. 622 of 2013

Arising Out of PS. Case No.-59 Year-2008 Thana- SAHAR District- Bhojpur

Ramapati Singh, S/O Late Gupteshwar Singh, Resident of Village Barki
Kharaun, Police Station Sahar, District Bhojpur (Arrah).

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

(In Criminal Appeal (DB) No. 649 of 2013)

For the Appellant/s : Mr. Ajay Kumar Thakur, Advocate.



For the O.P/s : Mr. Dudhnath Singh, Advocate.
Mr. S.C.Mishra, APP
Mr. Ataul Haque, Advocate.

(In Criminal Appeal (DB) No. 597 of 2013)

For the Appellant/s : Mr. Vikram Deo Singh, Advocate.
Mr. Prabhat Kumar Singh, Advocate.
Mr. Anirudh Kumar Singh, Advocate.
For the O.P/s : Mr. D.K.Sinha, APP
Mr. Ataul Haque, Advocate.

(In Criminal Appeal (DB) No. 561 of 2013)

For the Appellant/s : Mr. Vikram Deo Singh, Advocate.
Mr. Prabhat Kumar Singh, Advocate.
Mr. Anirudh Kumar Singh, Advocate.
For the O.P/s : Mr. A.K.Sinha (App)
Mr. Ataul Haque, Advocate.

(In Criminal Appeal (DB) No. 622 of 2013)

For the Appellant/s : Mr. Vikram Deo Singh, Advocate.
Mr. Prabhat Kumar Singh, Advocate.
Mr. Anirudh Kumar Singh, Advocate.
For the O.P/s : Mr. S.B.Verma (App)
Mr. Ataul Haque, Advocate.

=====

CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
and
HONOURABLE MR. JUSTICE ARUN KUMAR
C.A.V JUDGMENT
(Per: HONOURABLE MR. JUSTICE ARUN KUMAR)

Date : 20-08-2018

Heard learned counsel for the appellants and learned counsel for the State as well as learned counsel appearing on behalf of the informant.

2. All the four appeals, under Section 374(2) of the Criminal Procedure Code (hereinafter referred to as the 'Code'), have been preferred by the abovenamed appellants against the judgment of conviction as well as order of sentence dated 08.05.2013 and 16.05.2013 respectively passed by Mr. Shailesh Sharan Shrivastav, Additional Sessions Judge-I, Bhojpur at



Arrah in Sessions Trial Nos. 190 of 2010, 89 of 2010, 348 of 2009 and 280 of 2010 disposed of by the common judgment. As all the aforesaid appeals arise out of the common judgment and sentence, so these are being disposed of by this common judgment.

3. The prosecution case is based on the information given at 8:00 P.M. on 12.08.2008 by Dinesh Kumar (PW-8), the informant of the case. *Fardbeyan* was recorded near Kanhi Bridge. As per *Fardbeyan*, informant Dinesh Kumar (PW-8) along with his younger brother Dhanesh Sah and co-villager Talkeshwar Yadav on same day at 11:00 A.M. left village *Bathani Tola* of village Barki Kharaun for going to Sahar Block by the motorcycle of Talkeshwar Yadav and while started from Sahar Block at 5:00 P.M. in the evening for returning back to the village, they reached near Kanhi Bridge at around 5:40 P.M., all eight accused persons namely Pintu Singh, Ramapati Singh, Bela Singh, Manoj Singh, Rajo Singh, Anand Singh, Deepan Singh and Ram Vinay Singh, all co-villagers of the informant, suddenly turned up as they were lying in ambush and stopped the motorcycle and surrounded them and all were armed with pistols. Pintu Singh asked them to get down from the motorcycle and when they all get down then on the exhortation



given by Bela Singh, Pintu Singh, Ramapati Singh and Bela himself fired at Talkeshwar from their pistols and Manoj Singh and Anand Singh shot at Dhanesh Sah, younger brother of the informant from close range. The informant ran away, the accused persons also opened fire upon him, but missed the target. While he was running away to his village then on the way he met Kapil Sah (PW-3), Balister Sah (PW-5) and Shiv Kumar Chaudhary (PW-11). They all reached to village and narrated the incident, thereafter came back to the place of occurrence with large number of villagers and found Dhanesh Sah and Talkeshwar Yadav lying dead in pool of blood and motorcycle was also found fallen by their side, then villagers informed the police. The motive, alleged for committing crime, is that in the last Panchayat Election, Talkeshwar Yadav and Dhanesh supported Phulwanti Kuer, one of the rival candidates for Mukhiya, who won the election defeating wife of Ramapati Singh, thereafter accused persons had threatened of dire consequences.

Rana Ranvijay Kumar, Investigating Officer (PW-15), S.H.O. of Sahar Police Station, reached at the place of occurrence after receiving information and recorded *Fardbeyan* of the informant (PW-8) and prepared inquest report thereafter



registered FIR Sahar P.S. Case No. 59 of 2008 dated 12.08.2008 under Sections 147, 148, 149 and 302 of the Indian Penal Code and Section 27 of the Arms Act, against eight FIR named accused persons and proceeded with the investigation and on its conclusion, submitted charge sheet against all. The learned Magistrate, after taking cognizance of offence, committed the case to the court of Sessions and these appellants were put on trial and on its conclusion convicted by the trial court under Sections 302/149 of I.P.C. as well as under Sections 27 of the Arms Act and sentenced to undergo life imprisonment for committing offences under Sections 302/149 of I.P.C. with fine of Rs. 10,000/-each and in default of payment of fine will further undergo three years of rigorous imprisonment and to undergo seven years rigorous imprisonment under Section 27 of the Arms Act however, directed to run both the sentences concurrently. It was further directed to give 50% of the fine amount deposited by the convicts to the dependents of each of the deceased.

4. Learned counsels appearing on behalf of the appellants submitted that this is a case of blind murder, none has seen the murder of victims and due to class conflicts in the area for which Sahar area is notorious as fight between the land owner



class and agriculture labourers represented by Ranveer Sena and Male Group is known to everyone. Previously also such incidents was noticed. In context of the present case, it is submitted that the prosecution has failed to establish the place of occurrence, manner of occurrence, alleged motive as well as the medical evidence with regard to antemortem injury found on the person of deceased Dhanesh, is not supported by ocular evidence of the prosecution in particular failed to explain how Dhanesh sustained three incised wounds over his body beside one firearm injury though he was shot dead by two persons and accused persons alleged to be armed with no other weapon except pistols. Further it is submitted that Investigating Officer (PW-15) admits in his deposition that information of the crime was given to him from the Police Station while he was present in Ekbari village, which is situated 10-13 Kms. away from the place of occurrence, it means information regarding occurrence of the cognizable offence was earlier given to the concerned Sahar Police Station, but the FIR was not lodged though the Investigating Officer (PW-15), who also happens to be the S.H.O., admits this fact in para-29 of his cross-examination, further he acknowledges that such earlier information given to the Police Station is required to be recorded in the Station Diary



but that Station Diary, during trial, was not produced, even contents of the information is not mentioned in the case diary of the present case rather earlier information given regarding cognizable offence was suppressed by the prosecution. In fact, the FIR was lodged after much deliberation that becomes explicit from the fact that the FIR of the present case was received by the Magistrate on 14.08.2008, after considerable delay without any explanation. Learned counsels submitted that the time of occurrence is said to be in between 5:00 to 5:30 P.M. and the deposition of the Investigating Officer (PW-15), as stated in paragraph 1, he received information at 6:00 PM and he was only 12-13 Kms away from the place of occurrence in village Ekbari for investigation in another case. This fact is mentioned by him in para-26 of his cross-examination thereafter he proceeds to the place of occurrence by police Jeep and the *Fardbeyan* is recorded at 8:00 P.M. after considerable delay. It is also on the record that reports of the postmortem conducted on the dead bodies were sent to Ara on 13.08.2008 and the dead bodies were received in the mortuary of the Government Hospital at 10:30 A.M. and postmortem was conducted by the doctor at 10:40 A.M. , but FIR does not reach to the Chief Judicial Magistrate at Ara on 13.08.2008 rather it was received



on 14.08.2008 though the Investigating Officer (PW-15) has deposed that FIR was sent to the court on 13.08.2008, but no reason is explained why it reached on 14.08.2008, so the FIR appears ante-dated even the prosecution has not produced the dispatch register explaining the cause of delay. So FIR of the present case is ante dated and recorded after deliberation. In support of this contention, learned counsels have place reliance in the case of Meharaj Singh v. State of U.P.; (1994) 5 SCC 188. Learned counsels also place reliance on Lalita Kumari v. Government of Uttar Pradesh & Ors.; (2014) 2 SCC 1 and laid emphasis that any information received by the police regarding cognizable offence other than made by the informant is also required to be registered which is obligatory on the part of police. The earliest information must be recorded so that any embellishment cannot be made in the FIR as an after thought as well as to set the criminal law in motion at the earliest point of time.

5. Learned counsels for the appellants submitted that the prosecution has examined four witnesses, who are said to be the eye witnesses namely Kapil Sao (PW-3), Pradeep Sao (PW-4), Balistar Sah (PW-5) and Dinesh Kumar Sao, informant (PW-8), however, the trial court has disbelieved the testimony of Pradeep



Sao (PW4) whereas Kapil Sao (PW-3) and Balistar Sao (PW5), both are closely related to the informant (PW-8) and the deceased persons. Learned counsels submitted that the case of the prosecution is that informant (PW-8) along with his brother Dhanesh Sah and co-villager Talkeshwar Yadav were returning back from Sahar Block to their village by Kachhi Road which is on the southern flank of the canal, the evidence shows existence of a pitch road going parallel to the canal in northern flank from Sahar to Barki Kharaun village of the informant and for crossing the Kanhi Bridge over the canal then one can go to Barki Kharaun village. The informant (PW-8) was returning back to his village from Sahar on motorcycle along with his younger brother and Talkeshwar in rainy season in the month of August, so it quite obvious that anyone would follow a metal road for coming to village Barki Kharaun from Sahar and not a Kachchi road in particular it rained in the day hour and the Kachchi Road is not a shortcut route rather metal road and Kachchi Road runs parallel to each other, one at northern flank of the canal another on southern flank. This fact of existence of both roads is disclosed by Kapil Sao (PW-3) in para-49 of his cross-examination. He has clearly mentioned that from the northern flank of the canal, there is metal road and on the southern side is



a *Kachha rasta*. Balistear Sah (PW-5) another witness has also admitted in para-8 of his cross-examination that on the northern flank of the canal, there is pitch road on the northern side of the canal and Kachha road is on the southern flank, which the informant was following and it was muddy on that day due to rain. If anyone would go following the Kachcha road by motorcycle on the bank of canal then obviously impressoin of tyre of motorcycle would be found; more so in the rainy season. The Investigating Officer (PW-15) has not found any trace or impression of the tyre of the motorcycle on the way followed by the informant and the deceased, this fact is admitted by the Investigating Officer (PW-15) in para-34 of his cross-examination.

6. Further submission is that prosecution has failed to establish the place of occurrence (P.O.). In support of the contention, learned counsels drew attention to the deposition of the Investigating Officer (PW-15) that he found the place of occurrence 300 yards east to Kanhi Bridge on the southern flank of the canal whereas accordingly to PW-3 (Kapil Sao), place of occurrence is only at the distance of 5-6 bamboos in the eastern side from the bridge. Balistar Sah (PW-5) in para-14 has stated that the place of occurrence is at the distance of 6-7 bamboos in



the eastern to Kanhi Bridge. On this point, Dharamshila Devi (PW-13), wife of one of the deceased Talkeshwar Yadav, has deposed that after receiving information of murder of her husband and Dhaneshwar, she reached there along with villagers and found the dead bodies on the Kanhi Bridge itself. Learned counsels referred to para-10 of her deposition that the dead body of her husband was lying on the Bridge and found head of the dead body in the northern direction and leg facing southern side. Sumitra Devi (PW-14) categorically deposed in para-8 that she found the dead bodies at a distance of only ten steps from Kanhi Bridge. So there is major contradiction regarding the place of occurrence as some witnesses said that dead bodies were found on the Bridge itself, another only ten steps away from the Bridge, according to others only 5-6 bamboos away from the Bridge in the eastern direction and the Investigating Officer reaching at P.O. after these witnesses, finds the dead bodies 300 yards away from the Kanhi Bridge in the eastern direction, hence such major contradiction regarding P.O. goes to the root of the prosecution case.

7. Learned counsels further submitted that the prosecution case is that informant (PW-8) and the deceased persons were coming on a motorcycle following Kachcha road on the



southern flank of the canal despite a parallel metal road on the northern side and witnesses have admitted that it also rained , southern Kachchi Rasta was muddy as deposed by Balistar Sah (PW-5) in para-8, but the Investigating Officer (PW-15) has not found any mark or impression of the motorcycle's tyre on that road or nearby P.O., which indicates that they were not coming on motorcycle as is the case of the prosecution. Strangely enough, the motorcycle, alleged to be lying at the place of occurrence by the side of the deceased persons, was not seized by the Investigating Officer (PW-15). He admitted that no seizure list of the motorcycle was prepared and he did not find any blood stain mark or any mark of violence on the motorcycle. The informant (PW-8) and Raj Kumar Sao (PW-7) deposed that the motorcycle on which they were coming is of Talkeshwar Yadav though the motorcycle was not of Talkeshwar Yadav rather its owner was Ram Kishore Rai, Mukhia, resident of another village Dhanchasa as evident from paragraph 1 of deposition of Raj Kumar Sah (PW-7) who is cousin of the informant, whereas Investigating Officer (PW-15) has given the motorcycle on *Jimmanama* to Kapil Sao (PW-3), so PW-15 has also not ascertained the ownership of the motorcycle or has suppressed this fact of ownership of the motorcycle. So their



evidence indicate that informant and deceased were not coming together on motorcycle. It is submitted that the presence of the informant (PW-8) is improbable considering his escape unheart as he was surrounded by three sides by eight accused persons and another side is canal the only escape route and all accused persons are armed with pistols and only five are said to have resorted to firing so in such a situation, it is next to impossible that a person can escape without sustaining any injury or even a scratch though it is alleged that all accused fired at him moreover two persons were fired in his presence standing by his side so close but not even blood stain was found on his cloth.

8. It is also submitted that Kapil Sah (PW-3) is said to have seen the entire occurrence and it is not the case of the prosecution that any of the accused persons was armed with any sharp cutting weapon rather all armed with pistols and the allegation is that two persons Manoj Singh and Anand Singh, both shot at Dhaneshwar from close range so no question arises of missing the target but only one firearm ante mortem injury was found on the body of Dhaneshwar and rest other three injuries found on his person were caused by sharp cutting weapon and there is no accusation that he was assaulted with sharp cutting weapon by anyone. Dr. Jitendra Kumar (PW-9),



who has conducted postmortem examinations, has found these three sharp cutting injuries, so the medical evidence also negates ocular evidence in view of such contradictions taken into entirety other contradictory evidence on place of occurrence and other circumstances creating reasonable doubt that Dinesh Kumar Sao (PW-8) and other two witnesses namely Kapil Sao (PW-3) and Balistar Sah (PW-5) have seen the occurrence.

9. Evidence of Pradeep Sao (PW-4) was disbelieved by the trial court, as he, while being examined, was not able to identify the accused persons standing in the dock too at a very short distance, due to problem in the eye sight, so he could not see the occurrence from such distance as he claimed to have seen and could not identify any person. It is also submitted that Sadhu Saran Singh (PW-1) , Rajesh Kumar (PW-2), Hiralal Choudhary (PW-10), Shiv Kumar Choudhary (PW-11) and Laddu Choudhary (PW-12) have turned hostile to the prosecution case whereas Phulwanti Devi (PW-6), Raj Kumar Sao (PW-7), Dharamshila Devi (PW-13) and Sumitra Devi (PW-14), are hearsay witnesses and have not witnessed the occurrence.

10. Learned counsels also submitted that the motive for committing offence, as alleged by the prosecution, is that



deceased and the informant had supported Phulwanti Kuer (PW-6), a rival candidate of Mukhia and not supported wife of Rampati Singh in Mukhia Election held two years back, so in retaliation they killed both persons. It is submitted that Dhanesh was not even a voter at that point of time as he was minor not eligible for voting, and there is evidence on record, as admitted by witnesses, that during election no quarrel took place in between the candidates of Mukhia or their supporters and even in between two years no any untoward incidence happened and there is nothing on record to show that any information was given by the informant side of giving any threatening to them., so the accused appellants had no motive for eliminating the deceased persons and they all are co-villagers. Dharamshila Devi (PW-13), wife of deceased Talkeshwar Yadav, has admitted in para-12 of her cross-examination that one of the accused Ramapati Singh is a big farmer and there was dispute going on in between farmers and agricultural labourers for wages and Ranveer Sena represents farmers side and MALE Group represents labourers, so on account of that accused persons have been implicated falsely.

11. Learned counsels appearing on behalf of the State as well as the informant placed reliance on the testimony of eye-



witnesses namely Kapil Sao (PW-3), Pradeep Sao (PW-4), Balistar Sah (PW-5) and Dinesh Kumar Sao (PW-8) and submitted that prosecution has established the case beyond all reasonable doubts. However, they conceded that prosecution has not been able to explain the three sharp cutting injuries found on the person of Dhanesh, one of the deceased.

12. Having considered the rival contentions of both sides and on critical analysis of evidence on the record, the Court finds that the evidence of only three eye-witnesses of the prosecution, on the point of occurrence, are relevant in the present case namely Kapil Sao (PW-3), Balistar Sah (PW-5) and Dinesh Kumar Sao (PW-8) besides these witnesses other relevant witnesses Dharamshila Devi (PW-13) and Sumitra Devi (PW-14) are hearsay witnesses but are relevant and pertinent witnesses as they had seen the dead bodies visiting the place of occurrence. The evidence of Rana Ranvijay Kumar (PW-15), Investigating Officer of the case as well as medical opinion finding ante-mortem injuries on the dead bodies and ascertaining cause of death deposed by Dr. Jitendra Kumar (PW-9) are also relevant evidence worthy of consideration.

13. The Court finds on analysis of the evidence available on the record that there is considerable delay in lodging the FIR



in the present case. The time of alleged crime, as per Dinesh Kumar Sao (PW-8), the informant, is 5:30 P.M. but the *Fardbeyan* is recorded at 8:00 P.M. The distance in between the place of occurrence and the concerned Sahar Police Station is only 10 Kms. There is a metal road from the village to the Police Station, but no effort was taken by the informant (PW-8) and others to report the matter to police though the Investigating Officer(PW-15) received information of the crime approximately at 6:00 P.M. regarding murder of two persons, which is evident from his deposition that information was given to him from the police station while he was present in village Ekbari in connection with investigation of another case. According to him, as stated in para-26 of his deposition, the distance between Ekbari village to the place of occurrence of the present case is 12-13 Kms however more than one hour was taken in covering short distance by police jeep following metal road. The evidence of PW-8 (Informant) establishes the fact that Investigating Officer (PW-15) reached at the place of occurrence while the informant along with other villagers were present there, in other words PW-15 (Investigating Officer) reached at the place of occurrence when PW-8 was already present there, so the *Fardbeyan* and consequently FIR were not



recorded promptly rather considerable delay was caused for which no explanation is available. Another aspect of the matter is that information regarding the murder, a cognizable offence, was already given to the Police Station, the fact is accepted by the PW-15. It is settled law that any information regarding cognizable offence received by the police is required to be registered immediately.

14. In the case of Lalita Kumari (supra), the Apex Court decided an important issue whether a police officer is bound to register an FIR upon receiving any information relating to commission of cognizable offence under Section 154 Cr.P.C. or the police officer has power to conduct a preliminary enquiry in order to test the veracity of such information before registering the same. The Apex Court has held by reaching to conclusion, as quoted hereinbelow:

120. In view of the aforesaid discussion, we hold:

120.1. Registration of FIR is mandatory under Section 154 of the Code, if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation.

120.2. If the information received does not disclose a cognizable offence but indicates the necessity for an inquiry, a preliminary inquiry may be conducted only to ascertain whether cognizable offence is disclosed or not.

120.3. If the inquiry discloses the commission of a cognizable offence, the FIR must be registered. In cases where preliminary



inquiry ends in closing the complaint, a copy of the entry of such closure must be supplied to the first informant forthwith and not later than one week. It must disclose reasons in brief for closing the complaint and not proceeding further.

120.4. The police officer cannot avoid his duty of registering offence if cognizable offence is disclosed. Action must be taken against erring officers who do not register the FIR if information received by him discloses a cognizable offence.

120.5. The scope of preliminary inquiry is not to verify the veracity or otherwise of the information received but only to ascertain whether the information reveals any cognizable offence.

120.6. As to what type and in which cases preliminary inquiry is to be conducted will depend on the facts and circumstances of each case. The category of cases in which preliminary inquiry may be made are as under:

- a) Matrimonial disputes/ family disputes*
- b) Commercial offences*
- c) Medical negligence cases*
- d) Corruption cases*
- e) Cases where there is abnormal delay/laches in initiating criminal prosecution, for example, over 3 months delay in reporting the matter without satisfactorily explaining the reasons for delay.*

The aforesaid are only illustrations and not exhaustive of all conditions which may warrant preliminary inquiry.

120.7. While ensuring and protecting the rights of the accused and the complainant, a preliminary inquiry should be made time bound and in any case it should not exceed 7 days. The fact of such delay and the causes of it must be reflected in the General Diary entry.

120.8. Since the General Diary/Station Diary/Daily Diary is the record of all information received in a police station, we direct that all information relating to cognizable offences, whether resulting in registration of FIR or leading to an



inquiry, must be mandatorily and meticulously reflected in the said Diary and the decision to conduct a preliminary inquiry must also be reflected, as mentioned above.

15. So in view of the ratio laid down in the aforesaid case, the Apex Court has held that the police on receiving information disclosing a cognizable offence no preliminary enquiry is required in such cases rather registration of FIR becomes mandatory and further held that all information received by the Police Station is recorded either in the General Diary/Station Diary or Daily Diary of the Police Station. In sum and substance, all informations are required to be recorded relating in particular to cognizable offence. In the case at hand, PW-15 admits the fact that information disclosing cognizable offence i.e., murder of two persons, was received in the Police Station thereafter communicated to him as official mobile by police personnel but obviously the prosecution has suppressed the said information by not producing the entry regarding information recorded in the Station Diary leading to adverse inference against prosecution case, not only that FIR was not registered immediately thereafter.

16. The delayed FIR of the present case was registered on 12.08.2008 but reaches to the court on 14.08.2008 giving rise to an inference that the FIR was not registered at the time alleged



to have been recorded unless prosecution offers a satisfactory explanation for such delay either in dispatching or receiving of FIR copy by the concerned Judicial Magistrate. PW-15 (Investigating Officer) admits in his deposition that FIR was sent on 13.08.2008 to the local court but the FIR did not reach the court on that very day rather it reached before the court of Chief Judicial Magistrate on next day i.e., on 14.08.2008, neither the dispatch register was produced by the prosecution nor reason for delay in reaching the FIR to the local court was explained though the dead bodies were sent for postmortem on 13.08.2008 in the morning as reflected from the evidence of PW-9, Dr. Jitendra Kumar as postmortem was done at 10:40 A.M. so the FIR could have reached to the local court on 13.08.2008 itself, but there is no explanation why the FIR was not sent to the court on that very day. Even a copy of the FIR was not sent with dead bodies to the hospital for conducting postmortem examination, so police case reference does not find place in postmortem report as established from para-2 of the deposition of Dr. Jitendra Kumar (PW-9).

17. In deciding case of **Meharaj Singh** (supra), the Apex Court has held as follows:

12. FIR in a criminal case and particularly in a murder case is a vital and valuable piece of evidence for the purpose of appreciating the evidence led at the trial. The object of



insisting upon prompt lodging of the FIR is to obtain the earliest information regarding the circumstance in which the crime was committed, including the names of the actual culprits and the parts played by them, the weapons, if any, used, as also the names of the eye witnesses, if any. Delay in lodging the FIR often results in embellishment, which is a creature of an after thought. On account of delay, the FIR not only gets bereft of the advantage of spontaneity, danger also creeps in of the introduction of a coloured version or exaggerated story. With a view to determine whether the FIR, was lodged at the time it is alleged to have been recorded, the courts generally look for certain external checks. One of the checks is the receipt of the copy of the FIR, called a special report in a murder case, by the local Magistrate. If this report is received by the Magistrate late it can give rise to an inference that the FIR was not lodged at the time it is alleged to have been recorded, unless, of course the prosecution can offer a satisfactory explanation for the delay in despatching or receipt of the copy of the FIR by the local Magistrate. Prosecution has led no evidence at all in this behalf. The second external check equally important is the sending of the copy of the FIR along with the dead body and its reference in the inquest report. Even though the inquest report, prepared under Section 174 Cr. P.C., is aimed at serving a statutory function, to lend credence to the prosecution case, the details of the FIR and the gist of statements recorded during inquest proceedings get reflected in the report. The absence of those details is indicative of the fact that the prosecution story was still in embryo and had not been given any shape and that the FIR came to be recorded later on after due deliberations and consultations and was then ante timed to give it the colour of a promptly lodged FIR. In our opinion, on account of the infirmities as noticed above, the FIR has lost its value and authenticity and it appears to us that the same has been ante timed and had not been recorded till the inquest proceedings were over at the spot by PW8.

18. In the present case, as also observed earlier, prosecution has not offered any explanation that why the delay was caused in sending copy of the FIR to the learned Chief Judicial Magistrate which gives inference that FIR is



embellished and not lodged at the time it is alleged to have been recorded . The presence of the informant (PW-8) Dinesh Kumar Sao along with two deceased at the moment of commission of murder also appears doubtful for the reason that he was coming along with two deceased on a motorcycle but on the way before reaching Kanhi Bridge was stopped by eight accused persons who surrounded them from three sides though on the fourth side was canal, so there was no route left for his escape. Moreover, all accused are said to have been armed with firearms and immediately after getting down from the motorcycle, three persons namely Pintu Singh, Bela Singh and Ramapati Singh fired at Talkeshwar Yadav and two other accused namely Manoj Singh and Anand Singh shot at Dhanesh Sah. The informant (PW-8), as per his own account, was also standing by their side after getting down from the motorcycle and the deceased persons were shot from the very close range, but neither any blood mark was found on his cloth nor any kind of injury was caused to him while escaping away though in such situation it is next to impossible to escape away from the crime scene when eight persons have surrounded with firearm. In such a situation, escaping away without having any injury appears improbable, in particular, from a lonely place at canal where no place is



available to hide out or any intervening circumstances is found causing his rescue to run away unheart. It is also against natural conduct that a person would escape away without giving resistance to accused persons when his younger brother was being killed by them.

19. There is evidence on record that each accused persons, total in eight, was carrying firearms and not any other weapon and two persons Manoj Singh and Anand Singh shot at Dhanesh Sah from very close range but the evidence of PW-9, Dr. Jitendr Kumar, who has conducted postmortem examinations, found only one firearm injury on the body of Dhanesh Sah. In addition to that, he also found three incised wounds i.e., on both shoulders as well as on the lower neck of both sides. However, there is no explanation that how three incised injuries were caused to Dhanesh. PW-2 has categorically stated that he saw all accused persons carrying with pistols and they simultaneously fired on all three persons, Talkeshwar Yadav, Dhanesh Sah and Dinesh Kumar Sao but no injury was caused to Dinesh Kumar Sao (PW-8) and succeeded in fleeing away makes the prosecution case doubtful. Moreover, in this case not a single firearm used in the offence was recovered from any of the accused persons.



20. The deposition of PW-5, Balistar Sah, as stated in para-1, shows that all accused persons fired at PW-8, Dinesh Kumar Sao, so if eight persons were firing at PW-8, so it is improbable to escape away without sustaining any injury, which makes the presence of PW-8 at the place of occurrence doubtful. Non-explanation that how Dhanesh sustained three incised wounds on his person and only one fire arm injury though ocular evidence is that two persons shot at him from very close range at a distance of 1-2 feet away but only one firearm injury is found on his person, so in this regard oral evidence is irreconcilable with the medical evidence coupled with major contradictions in the ocular evidence of eye-witnesses, Kapil Sao (PW-3), Balistar Sah (PW-5) and Dinesh Kumar Sao (PW-8).

21. There is also major contradictions on the point of place of occurrence. The case of the prosecution is that Dinesh Kumar Sao (PW-8) was returning back from Sahar along with his brother Dhanesh and one Talkeshwar Yadav on his motorcycle following a Kachchi road from the southern flank of the canal despite the fact that there is a metal road on the northern flank of the canal for going to his village Barki Kharaun from Sahar. The direction of Barki Kharaun village is



in western side from Sahar as well as from so-called place of occurrence. If anyone comes by metal road then crosses Kanhi Bridge thereafter goes towards the western direction to Barki Kharaun village but there is no explanation by the prosecution why the informant (PW-8) and deceased were following Kachcha road instead of metal road. The informant (PW-8) and deceased were following Kachcha road on the southern flank of the canal, it was a rainy season and on that day road was muddy because of rain fall on that very day, as deposed by Balistar Sah (PW-5) in his cross-examination. So if anyone is following muddy road after rain then there is every likelihood of finding impression of tyre of the motorcycle on such road but no such impression of tyre has been found by the Investigating Officer (PW-15), who admits this fact in para-4 of his cross-examination that no such mark was found on the way followed by the informant and deceased.

22. The prosecution case is that the motorcycle, by which informant and two others went to Sahar, was of Talkeshwar Yadav, one of the deceased, which is contradicted by another witness Raj Kumar Sao (PW-7), according to him, as deposed in para-1 of his cross-examination the said motorcycle was of one Ram Kishore Rai, Mukhiya of village Dhanchhua. The said



motorcycle was seized by the Investigating Officer (PW-8) at the place of occurrence but no seizurelist was prepared, which is an admitted position; moreover, according to PW-15 no any significant mark of violence or blood stain was found on the motorcycle though the case of the prosecution is that just from a distance of 1-2 steps from the motorcycle, they were shot dead and motorcycle was also found lying near the deceased persons. Non-preparation of the seizurelist of the motorcycle also creates doubts against the prosecution case as well as contradiction regarding its ownership as some witnesses deposed that motorcycle is of Talkeshwar Yadav whereas one witness Raj Kumar Sao (PW-7) said that motorcycle was of one Ram Kishore Rai of another village and the Investigating Officer handed over the motorcycle to one Kapil Sao on *Jimmanama*, so reasonable doubt is created whether informant (PW-8) along with his brother Dhanesh and Talkeshwar Yadav were coming on the motorcycle from Sahar following the route of Kachchi Road despite availability of a metal road on the northern flank of the canal. The absence of trail of impression of tyre on muddy road near the place of occurrence, non-seizure of the motorcycle fortifies the doubt.

23. The place of occurrence, according to PW-15, the



Investigating Officer, is 300 yards away east to Kanhi Bridge whereas according to Kapil Sao (PW-3), the place of occurrence is only at the distance of 5-6 bamboos in the eastern side of Kanhi Bridge which is much less than 300 yards. According to Balistar Sah (PW5), the place of occurrence is at a distance of 6-7 bamboos in the eastern direction to Kanhi Bridge whereas Dharamshila Devi (PW-13), wife of one of the deceased Talkeshwar Yadav, found the dead body of her husband on Kanhi Bridge, as disclosed by her in para-10 of her cross-examination. PW-14, Sumitra Devi, deposed that dead bodies of Dhanesh and Talkeshwar were found 10 steps ahead of Kanhi Bridge. So in view of such major contradictions regarding the place where dead bodies were found, creates reasonable doubt to the prosecution cases, in other words place of occurrence has not been proved by the prosecution. Such major contradictions and taking into the account the entire evidence as discussed above, goes to the root of the prosecution case.

24. Moreover, the motive, as alleged by the prosecution, too has not been proved. The motive for committing murder is enmity nursed by the accused persons because deceased persons supported Phulwanti Kuer, a rival candidate of Mukhiya, fighting election against the wife of Ramapati Singh, one of the



appellant. The election of Mukhiya was held in the year 2006 and after lapse of two years, present occurrence was committed, there is no evidence that on the day of election any quarrel or untoward happening or rigging in the election took place or immediately thereafter any quarrel or untoward incident happened in between both sides. There is evidence that villagers of Bathani Tola of Barki Kharaun were supporters of both sides, so why only these two persons were targeted in absence of any specific role played by them, moreover, Dhanesh Sah was not voter at that time of the Mukhia election.

25. So taking into account the entire evidence as well as major contradictions cropping in the prosecution evidence, as discussed above, make the prosecution case doubtful that anyone has seen the occurrence rather it appears a blind murder having no eye witness to the occurrence, therefore, vital discrepancies in the evidence of prosecution witnesses regarding place of occurrence, manner of occurrence, delay in sending the FIR to the local Magistrate, have set in. So the appellants are entitled of benefit of doubts, accordingly, they are acquitted from all charges and are directed to be released forthwith if not wanted in any other case. Since one of the appellant Rajo Singh (Criminal Appeal (DB) No. 597 of 2013) is on bail, so he is



discharged from the liability of his bail bonds.

26. The appeals stand allowed.

(Arun Kumar, J)

Dinesh Kumar Singh,J I agree.

sujit/-

(Dinesh Kumar Singh, J)

AFR/NAFR	NAFR
CAV DATE	14.08.2018
Uploading Date	21.08.2018
Transmission Date	21.08.2018

