

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.240 of 2013

Arising Out of PS. Case No.-62 Year-1989 Thana- DHANARUA District- Patna

Parmanand Gope (Yadav) , Son of Late Anandi Gope, Resident of Village
and Post - Nenauri, P.S.- Dhanarua, District - Patna

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

with

Criminal Appeal (DB) No. 191 of 2013

Arising Out of PS. Case No.-62 Year-1989 Thana- DHANARUA District- Patna

1. Ram Ratan Gope , son of Jathu Gope
2. Sanjeevan Gope, son of late Swaroop Gope, both residents of village -
Nanauri, Police Station – Dhanarua, District – Patna

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

(In Criminal Appeal (DB) No. 240 of 2013)

For the Appellant/s : Sri Ajay Kumar Thakur, Advocate
Sri Ritwaj Raman, Advocate
Sri Md. Imteyaz Ahmad, Advocate

For the Respondent/s : Dr. Mayanand Jha, A.P.P.

(In Criminal Appeal (DB) No. 191 of 2013)

For the Appellant/s : Sri Kanhaiya Prasad Singh, Senior Advocate
Sri Prateek Mishra, Advocate

For the Respondent/s : Dr. Mayanand Jha, A.P.P.

CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

and

HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAKESH KUMAR)

Date : 22-11-2018

1. In the aforesaid two Appeals three appellants were
tried together and convicted by a common judgment and as such



both the Appeals were taken up together and are being disposed of by this common judgment.

2. Parmanand Gope [appellant in Cr. Appeal (D.B.) No. 240 of 2013] was convicted for commission of offence under Sections 302, 337 & 148 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”) by judgment of conviction dated: 24-01-2013 passed by Sri Sunil Kumar Sinha ‘Mukul’, learned Adhoc Additional Sessions Judge-II, Patna (hereinafter referred to as the “trial judge”) in Sessions Trial No. 258 of 1990. Two appellants namely Ram Ratan Gope and Sanjeevan Gope of Cr. Appeal (DB) No. 191 of 2013 were also convicted by the same judgment for offence under Section 302/109, 302/149 and 147 of the I.P.C. By order dated 28-01-2013 appellant -Parmanand Gope was sentenced under Section 302 of the I.P.C. to undergo rigorous imprisonment for life and to pay a fine of Rs. 5,000/-. Under Section 337 of the I.P.C. he was sentenced to undergo imprisonment for six months and under Section 148 of the I.P.C. he was directed to undergo imprisonment for three years. Under Section 27 of the Arms Act he has been sentenced to undergo rigorous imprisonment for seven years and to pay a fine of Rs. 5,000/-. Other two appellants namely



Ram Ratan Gope and Sanjeevan Gope too were sentenced to undergo rigorous imprisonment for life under Section 302/109 of the I.P.C. and to pay a fine of Rs. 5,000/- each. Under Section 147 of the I.P.C. they were sentenced to undergo imprisonment for two years and under Section 302/149 of the I.P.C. they were sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs. 5,000/- each. All the sentences were directed to run concurrently.

3. Short fact of the case is that on 09-05-1989 at 09:30 Hours Sri S.D. Pandey, Sub Inspector of Police -cum- Officer- In-Charge of Dhanarua Police Station recorded fardbeyan of Chandrawati Devi @ Chanpati Devi /P.W.3 (wife of the deceased). The fardbeyan was recorded in village : Nanauri, P.S. - Dhanarua, District- Patna. In the fardbeyan informant – P.W. 3 disclosed that in the preceding evening at about 06:00 P.M. her husband had returned back carrying oil and saw Parmanand Gope [appellant in Cr. Appeal (DB) No. 240 of 2013], Shardanand Gope and Satais Gope all residents of village : Nanauri were stacking soil on the road. After noticing the same her husband inquired as to why they were stacking soil on the road since due to the same movement of villagers was being obstructed. Thereafter all the aforesaid three accused persons abused him and started brick batting and thereafter informant and her husband went inside the house. After



some time her husband came out and was standing near his door. Thereafter again Parmanand (appellant), Shardanand Gope and Satais Gope by way of abusing them reached to their roof and instigated to come so that he may finish the dispute. Thereafter informant saw that her villager- Ram Ratan Gope [appellant no. 1 in Cr. Appeal (DB) No. 191 of 2013] and Sanjeevan Gope [appellant no. 2 in Cr. Appeal (DB) No. 191 of 2013] also reached on the roof of Parmanand Gope. Ram Ratan Gope and Sanjeevan Gope were carrying gun in their hands and came on the roof of Parmanand and after filling bullets in the gun they were standing there. When accused Shardanand Gope exhorted to give shot of firing then Ram Ratan Gope [appellant no. 1 in Cr. Appeal (D.B) No. 191 of 2013] handed over his gun to Parmanand Gope (appellant in Cr. Appeal DB No. 240 of 2013) and Sanjeevan Gope [appellant no. 2 in Cr. Appeal (DB) No. 191 of 2013] handed over his gun to accused - Satais Gope. Both of them i.e. Parmanand and Satais gave one shot of firing each. The shot of firing which was given by Parmanand hit the neck of her husband causing injury. She tried to hold her husband but he fell down on Earth and blood started oozing out and after some time he died. The informant further stated that she saw that all the five accused persons after getting down from the roof fled away. The informant stated that in



her family there were no other members and this was the reason that no information could be communicated to Police Station. The informant alleged that Parmanand Gope (appellant), Shardanand Gope, Satais Gope, Ram Ratan Gope and Sanjeevan Gope all with common intention creating unlawful assembly carrying lethal weapons firstly had threw stones and by giving fire arm injury had killed her husband. The said fardbeyan was read over to her and on finding it correct she put her thumb impression. The said fardbeyan was also signed by one Jugal Gope, who has not been examined as a witness. On the basis of the said fardbyan on 09-05-1989 at 12:45 P.M. a formal F.I.R. vide Dhanarua P.S. Case No. 62 of 1989 was registered for the offence under Sections 147/ 148/ 149/ 302/ 336 of the I.P.C. and Section 27 of the Arms Act against: 1. Parmanand Gope (appellant), 2. Shardanand Gope (died during the trial), 3. Satais Gope (died during the trial), 4. Ram Ratan Gope [appellant no. 1 in Cr. Appeal (DB) No. 191 of 2013] and 5. Sanjeevan Gope [appellant no. 2 in Cr. Appeal (DB) No. 191 of 2013].

4. During investigation after finding the accusation true on 18-11-1989 charge-sheet was submitted against all the F.I.R. named accused persons and some other accused also. Thereafter on the same day learned Chief Judicial Magistrate, Patna took



cognizance of the offence and the case was committed to the court of Sessions on 26-05-1990. Thereafter it was numbered as Sessions Trial No. 258 of 1990. In the case on 20-07-1992 separately charges were framed and trial commenced.

5. During the trial to establish its case on behalf of the prosecution altogether seven witnesses were examined. Out of seven witnesses, P.W.1 – Ram Singhasan (brother of the deceased), P.W.2- Jitendra Kumar Yadav (son of the deceased), P.W.3 – Chandrawati Devi @ Chanpati Devi (wife of the deceased and informant) and P.W. 5- Rajniti Prasad (son of the deceased) were examined as eye-witnesses to the occurrence. P.W.4 / Sita Ram Singh (cousin of the deceased) was examined as a hearsay witness. The doctor who conducted post-mortem examination on the dead body of the deceased namely: Dr. Uma Shankar Prasad was examined as P.W. 7 and Sub-Inspector of Police-cum-Officer-In-Charge of Dhanarua Police Station namely- Shankar Dayal Pandey was examined as P.W. 6.

6. After examination of the prosecution witnesses on 25-07-2008 all the circumstances and evidences collected 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 claimed to be innocent.



7. To disprove the prosecution case from defence side also three witnesses were examined namely: D.W.1 / Sukhdeo Upadhyaya, D.W. 2 / Upendra Prasad and D.W.3 / Krishna Prasad, all co-villagers of the deceased as well as accused.

8. Sri Kanhaiya Prasad Singh, learned senior counsel assisted by Sri Prateek Mishra, learned counsel for the appellants after placing entire evidence has argued that prosecution has not been able to establish its case beyond all reasonable doubt so far the two appellants in Cr. Appeal (DB) No. 191 of 2013 are concerned. It has been argued that there are serious contradictions in the evidence of the prosecution witnesses regarding handing over gun by both the appellants to other two accused persons namely- Parmanand and Satais. He has emphasized that due to some animosity both the appellants were arrayed as accused in the present case and the learned Trial Judge without any cogent evidence has passed the judgment of conviction against them also. Sri Singh has emphasized that though occurrence took place on 08-05-1989 at 06:00 P.M. there is no explanation of delayed recording of fardbyan in the case. Fardbyan was recorded on the next day in the morning at 09:30 A.M. He submits that informant in her fardbyan has made categorical statement that in the family there were none other members which fact has been stated by



P.W.3 – informant in paragraph- 2 of the F.I.R. however during trial P.W.1 , P.W.2 and P.W.5 have come forward claiming to be eye-witnesses to the occurrence. According to Sri Singh this categorically depicts that none had seen the occurrence and subsequently a false case was made out as if in the occurrence both the appellants were involved. According to Sri Singh since there is no any cogent evidence against both the appellants they are entitled to be acquitted.

9. Similarly Sri Ajay Thakur, learned counsel assisted by Mr. Md. Imteyaj Ahmad, learned counsel for the appellant Parmanand Gope in Cr. Appeal (DB) No. 240 of 2013 has argued that belated recording of fardbyan is itself sufficient to draw an inference that the occurrence was not seen by anyone and subsequently in a pre-planned manner due to family dispute since both were *pattidars*, appellant- Parmanand was arrayed as accused in the present case. Sri Thakur has argued that on the basis of evidence of P.W. 6 / Investigating Officer it appears that prosecution has purposely suppressed the first version and this was the reason that despite the fact that learned Trial Judge exercising power under Section 311 of the Cr.P.C. had summoned Station Diary Entry same was not produced by the prosecution. He submits that the Investigating Officer who had recorded fardbyan



in his evidence has stated that on 09-05-1989 at about 08:30 he received information on rumor that murder had taken place thereafter he with Police Party rushed to the place of occurrence and at 09:30 AM on 09-05-1989 he recorded fardbyan of the informant. P.W. 1 is none else but own elder brother of the deceased and Bhaisur of the informant. In his evidence he stated that in the morning he went to Police Station; he informed the Police and thereafter Police had reached at the place of occurrence and thereafter fardbyan was recorded. According to Sri Thakur, once P.W. 1 had given information to the Officer -In-Charge in the Police Station regarding the occurrence there is no reason to doubt that the Investigating Officer had not recorded his fardbyan. He submits that prosecution has purposely suppressed the first version which was given by P.W. 1 to Police and Police purposely had introduced that it got rumor information regarding murder. It has also been argued that prosecution has withheld the independent witnesses. By way of referring to the evidence of the Investigating Officer i.e. P.W. 6 in paragraphs 5 & 7 he submits that the Investigating Officer has stated that after his arrival at the place of occurrence in the village he recorded statement of number of independent witnesses but during the trial save and except own family members of the deceased and informant none of the



independent witnesses had come forward to depose as prosecution witness. Sri Ajay Thakur has further argued that the prosecution case is demolished on the basis of the post-mortem examination report. He submits that at the time of post-mortem examination solid food substance was found in the stomach of the deceased. According to Sri Thakur it appears that occurrence had taken place not at the time as suggested by the prosecution rather it had taken place at belated stage when deceased had already taken dinner. By way of referring to the post-mortem report i.e. Ext. 5 it has been argued that on the person of the deceased besides fire arm injury other injuries were also noticed which was not the case of the prosecution. As per prosecution case in the occurrence only one gun shot was given on the injured and as such on the dead body there was no reason to notice any other injury save and except injury caused by fire arm. Learned counsel for the appellant submits that as per the facts disclosed in the F.I.R. evidence of other witnesses who have claimed to be eye-witness are to be disbelieved since informant in her fardbyan was very much specific that at the time of occurrence there was no other member in the family and as such there was no occasion for other witnesses to witness the occurrence. He has also adopted the submission of Sri Kanhaiya Prasad Singh, learned senior counsel on the point of



belated lodging of F.I.R. and it has been argued that on examination of the inquest report and post-mortem examination report the prosecution case comes into cloud of doubt. He submits that in the inquest report, which was prepared at 09:45 Case No. i.e. Dhanarua P.S. Case No. 62 of 1989 was mentioned whereas in the case formal F.I.R. was drawn at 12:45. He further submits that it is the case of the prosecution that dead body was sent for post-mortem examination from the place of occurrence but in the post-mortem report also Case No. has been mentioned which creates serious doubt on the prosecution case. Learned counsel for the appellant -Sri Ajay Thakur has tried to persuade the court that non- production of Station Diary Entry has seriously prejudiced the case of the appellants. By way of referring to the order sheet of the court below dated: 21.10.2009, 12.01.2010, 07.04.2010 and 24.05.2010 he submits that it is evident that the learned trial judge exercising power under Section 311 of the Cr.P.C. had summoned Station Diary Entry but it was never produced by the prosecution whereas Senior Superintendent Of Police was also directed to produce the same. This creates serious doubt on the prosecution case. Accordingly as per learned counsel for the appellant the prosecution has not been able to establish its case and it was a fit



case for passing order of acquittal but the learned trial judge has incorrectly passed the judgment of conviction and sentence.

10. Sri Mayanand Jha, learned Additional Public Prosecutor has strenuously refuted the submission of learned counsel for the appellants. He submits that so far delay in lodging F.I.R. is concerned fact remains that occurrence had taken place in the year 1989 within the jurisdiction of Dhanarua Police Station. He submits that this Court can take judicial notice of the fact that during the said period the area was seriously affected by Naxalites. Even witnesses have categorically stated that the said area was Naxali affected area and this was the reason that though occurrence had taken place at about 6.00 P.M. on 08.05.1989 none dared to go to inform the Police. Even Chaukidar who was asked to inform the Police did not dare to go to the Police Station for informing about the occurrence and as such delay was natural. Besides this, it has been argued that Police Station was about 18 K.M. away from the place of occurrence and for reaching Police Station for about 6-7 K.M. there was no road. He has emphasized that the reason for not going to the Police Station in the evening at the place of occurrence was none else but the fear psychosis of the Society due to the reason that the said area was severely affected by Naxalites and this is the reason that in the next morning Police



got information and thereafter fardbyan was got recorded. Sri Jha has argued that the prosecution case has been corroborated by the medical evidence i.e. post-mortem examination report. He submits that it was the case of the prosecution that firing was made from the roof of the appellant/ Parmanand. In the post-mortem examination report it has been noticed that the bullet which had hit the neck was moving downward. Regarding submission of learned counsel for the appellants that the deceased was having other injuries also, he has argued that it is the case of the informant itself that firstly brick batting was made and as such there was possibility that the deceased might had also received other injuries. Besides this, it has been submitted, that there is possibility that after getting fire arm injury when the deceased fell down he might would have received some superficial injuries which were noticed by the doctor at the time of post -mortem examination. Sri Jha has argued that the evidence of P.W. 3 / informant is unimpeachable and very much consistent. According to him, on examination of entire evidence of P.W. 3 read with post -mortem examination report as well as evidence of the Investigating Officer there is no reason to examine the prosecution case with any doubt. According to Sri Jha the learned trial judge has rightly passed the judgment of conviction and sentence.



11. Besides hearing learned counsel for the parties, we have minutely examined entire evidence on record and after going through the same, *prima facie*, we are satisfied that prosecution has been able to establish its case beyond all reasonable doubt. However, before proceeding it would be necessary to firstly examine the evidence of the informant who was examined as P.W.3.

12. The informant / P.W.3 is Chandrawati Devi @ Chanpati Devi whose husband was done to death in her presence. Her evidence was recorded on 16th March, 1993. She deposed that occurrence had taken place in the year 1989 at about 5-6 P.M. Her husband was coming carrying oil. She saw that Parmanand (appellant), Shardanand (since died) and Satais (since died) jointly were stacking soil on the passage. Her husband inquired as to why they were obstructing the passage. How villagers would move ? Thereafter, all the aforesaid accused persons started abusing him and female inmates of accused persons from roof started to throw bricks. Her husband went inside the house. After some time when dispute was settled her husband came out. This witness further stated that she saw that accused persons carrying gun were on the roof of Parmanand (appellant's house). She saw all the accused persons on the roof namely Ratan [appellant no. 1 in Cr. Appeal.



(DB) No. 191 of 2013], Sanjeevan [appellant no. 2 in Cr. Appeal (DB) No. 191 of 2013] , Parmanand [sole appellant in Cr. Appeal (DB) No. 240 of 2013] , Shardanand (since died) and Satais (since died). She saw that Ratan and Sanjeevan were carrying gun in their hands. Shardanand ordered and exhorted to kill by giving shot of firing. Then Ratan handed over his gun to Parmanand and Sanjeevan handed over his gun to accused- Satais. Parmanand fired which hit her husband on the neck. Her husband fell down. Thereafter accused – Satais also fired but it did not hit anyone. Thereafter all the accused persons got down from the roof and she started crying. Her husband after falling down died. Police arrived on the next day and she gave her fardbyan to Police. In paragraph- 15 of her cross-examination this witness has stated that at the time of giving information to the Police she described everything which she had recollected. She further stated that at the time of recording case she was remembering as to who had seen the occurrence. Thereafter she voluntarily stated that since the accused persons had threatened that whoever would give evidence same thing would happen, none were daring to give evidence in the case. This witness was cross-examined at length and lastly she was given suggestion that she had given false evidence which was denied by her. On examination of her entire evidence and cross-examination



we don't find anything to see her evidence with any doubt rather in the cross-examination nothing could be extracted to raise doubt on her evidence.

13. P.W.1/ Ram Singhasan was the elder brother of the deceased and he too was examined as an eye-witness. In similar manner P.W.2 / Jitendra Kumar Yadav (son of the deceased) and Rajniti Prasad / P.W. 5 (another son of deceased) were examined as eye-witnesses. In the evidence of P.W. 1 it has come as if on the next day he had gone to Police Station and informed the Police but this has been controverted in the evidence of the Investigating Officer who in his evidence has stated that he got information on rumor regarding the occurrence. On examination of their evidences one thing is very much clear that the area where the informant was residing was Naxalite affected area and almost all the witnesses have deposed the reason for non-informing the Police in the same evening on which occurrence had taken place. Accordingly the plea which has been raised regarding belated information given to the Police, appears to be insignificant in the facts and circumstance of the present case.

14. P.W.4 / Sita Ram Singh (cousin brother of the deceased) was examined as a hearsay witness. He stated that on the date of occurrence he got information that the deceased was



gunned down then he went there and saw that the deceased – Ram Ekbal had already died. This witness was informed by the wife of the deceased regarding the entire facts of the case as well as involvement of all the accused persons including the aforesaid appellants. Since the wife of the deceased, i.e. P.W. 3 has stood the test of credibility, evidence of P.W. 4 may not be ignored and it is admissible.

15. P.W.7 – Dr. Uma Shankar Prasad on 10-05-1989 was posted as Medical Officer, Training Reserve Post in the Department of Forensic Medicine and Toxicology, P.M.C.H., Patna and on the same day at 10:45 AM he conducted post-mortem examination on the dead body of Ram Ekbal Gope and noticed the following facts:-

“(3) Rigor mortis absent all over body. Abdomen, stertem, penis swollen. Tongue protuded. All due to decomposition. Blistes and peelings off cuticle all over the body.

(4) The following ante mortem wounds were found on the body:

(i) One entry wound of 3/4” diameter with irregular edges was found in the right side of neck 1” below the lower border of mandible. The underlying structures were found pierced and a metallic object like bullet was found embedded in the Vth cervical vertebra which was found fractured.

(ii) Lacerated wound 1”x1/2” x whole thickness of lip on the right side of lower lip.

(iii) Abrasion 1”x 1/2” in the right knee.

(iv) Abrasion 3/4”x1/2” on just below left knee.

(5) The body was in advanced stage of decomposition. On dissection foul smelling gas escaped from the abdomen. About 150 c.c. blood and blood clots was found in the thoracic cavity. All the viscera were



found pale. In stomach yellowish colour semi- solid material was found.

(6) In my opinion the death was due to injuries described above. Injury no. 1 was caused by fire arm and rest injuries were caused by hard and blunt object.

(7) Time since death between 24 to 48 hours approximately.

(8) The bullet was sealed and handed over to the Constable”

He also proved the post-mortem examination report which was marked as Ext. 5. In cross-examination in paragraph-11 he described that injury no. 1 caused by fire arm injury was a bit downward. This also corroborates the oral evidence since it is the case of the prosecution that firing was made from the roof while the deceased was standing near the door.

16. The Investigating Officer- Shankar Dayal Pandey was examined as P.W.6. On 09-05-1989 he was posted as Officer -In-Charge in Dhanarua Police Station. He stated that on 09-05-1989 in the morning on rumor he received information about the occurrence and after entering Station Diary Entry vide Sanha No. 194 dated 9.5.1989 he rushed to the place of occurrence and at the place of occurrence he recorded fardbyan of the informant. This witness proved the fardbyan which was marked as Exhibit -1. He also proved formal F.I.R. which was marked as Ext. 2. He prepared inquest report and same was marked as Ext. 3. At the place of occurrence the Investigating Officer also found blood mark and thereafter he seized blood soaked soil and prepared



seizure list and seizure list was marked as Ext. 4. Thereafter dead body was sent for post- mortem examination and subsequently he obtained post-mortem examination report. He further deposed that during investigation he recorded statement of number of witnesses under Section 161 of the Cr.P.C. In paragraphs - 5 and 6 of his evidence he depicted about the details of the place of occurrence. As per his evidence it was evident that the house of the appellant /Parmanand was just opposite the place where dead body was found lying. In between the house of the appellant and informant's side there was a lane. In cross -examination in paragraph- 17 he reiterated that on getting information on rumor he reached at the place of occurrence. He clarified that name of the person from whom such information was received was not recorded in the case diary. In paragraph - 19 of his cross-examination he has further reiterated about the place of occurrence. In paragraph -20 of his cross- examination the Investigating Officer /P.W. 6 clarified that he tried to recover the gun used in the occurrence but same could not be recovered. While being cross- examined from P.W. 6 / Investigating Officer contradictions were taken in respect of evidences of P.W. 1, P.W. 2, P.W. 3 and P.W. 5 however on going through the statement of those prosecution witnesses in which their attention was drawn as



well as contradictions which have been taken from the Investigating Officer we found no sufficient contradictions to draw an inference that witnesses had not deposed truly.

17. So far evidence of P.W. 3 / Chandrawati Devi @ Chanpati Devi who is informant of the case is concerned we do not find any iota of material to see her evidence with doubt. Even for the time being if it is considered that there were some contradictions in respect of evidences of P.Ws. 1, 2 and 5 who were examined as eye witnesses to the occurrence in the evidence of P.W. 3 / the informant there is nothing to create doubt on her evidence. Sri Kanhaiya Prasad Singh, learned senior counsel appearing on behalf of the two appellants has emphasized that in a case based on solitary evidence the court may examine the evidence with caution. It is reiterated that we have cautiously examined the evidence of P.W. 3 who is the informant of the case and wife of the deceased. Her evidence is very much consistent and on examination of her whole evidence we are of the considered opinion that her evidence is unimpeachable and her evidence is truthful.

18. The evidence of P.W. 3 has been corroborated by medical evidence particularly on the point that this witness who had seen the occurrence had stated that firing was made from the



roof of appellant / Parmanand. Meaning thereby that from upward firing was made on downward side. The injury no. 1 which was noticed by P.W. 7 / Dr. Uma Shankar Prasad depicts that bullet had gone downward through the neck of the deceased. This fact has been clarified by P.W. 7 in paragraph- 11 of his cross-examination.

19. The submission of Sri Ajay Thakur, learned counsel for the appellant that solid food substance was found in the intestine of the deceased makes no difference to the prosecution case particularly in a situation in which evidence has come that due to fear of Naxalis since Dhanarua was badly Naxalite affected area there was every possibility that after Sunset no one were daring to come out of the house. In such a situation there was every possibility to have meal even before the Sunset. Moreover there is no straight jacket formula of taking meal at a particular time.

20. The submission of Sri Thakur, learned counsel for the appellants that besides one fire arm injury other injuries on the person of the deceased also which creates doubt on the prosecution case has got no substance. It was the case of the prosecution itself that before firing was shot witnesses had said that female inmates of the accused side had thrown bricks from



the roof. Moreover basically three superficial injuries were found on the person of the deceased besides one fire arm injury. There were scratches on elbows of the deceased and also one injury on the lip of the deceased. If in a case deceased had received fire arm injury and fell down on hard substance such injuries may not be ruled out. Besides this it is settled that if there are some contradiction in between oral and medical evidence then in a case of credible oral evidence such inconsistencies in the medical evidence can be ignored. However in the present case there is no such inconsistency. Rather the injury no. 1 categorically corroborates the oral evidence.

21. Sri Thakur has emphatically argued that as per F.I.R. evidence of other eye witnesses may not be believed. For the time being if such submission is accepted and only reliance is placed on the evidence of the informant, her evidence is itself sufficient for coming to conclusion that the learned trial judge has rightly passed the judgment of conviction and sentence against the appellants. Regarding the pleas which were taken by learned counsels in both the Appeals regarding delayed lodging of fardbyan and F.I.R., the witnesses in the evidences are consistent that village i.e. Dhanarua and surrounding areas during the period of occurrence were badly Naxalite affected areas. Even we can



also take judicial notice of the fact that during the said period Dhanarua and near by District- Jehanabad and other areas were Naxalites prone areas and during those period movement after Sunset was very difficult. Besides this the prosecution witnesses on this very point are very much consistent. Accordingly after the occurrence for the whole night going to Police Station by either of the witnesses which was about 18 K.M. away was not unnatural and on the next morning itself Police had already arrived at the place of occurrence and thereafter fardbyan was recorded and investigation commenced.

22. Sri Ajay Thakur, learned counsel for the appellant in Cr. Appeal (DB) No. 240 of 2013 has further taken a plea that prosecution has suppressed the initial version, however save and except the evidence of P.W. 1 who deposed that he had gone to Police Station in the next morning and informed the Police, it is itself not sufficient to draw any inference regarding suppression of initial version. It is the case of defence that occurrence was not seen by other eye witnesses but they had not disputed regarding the presence of the informant i.e. P.W. 3 at the place of occurrence. Sri Thakur to corroborate his submission regarding suppression of initial version has drawn our attention to different orders of the trial court i.e. order dated - 21.10.2009 , 12.01.2010,



07.04.2010 and 24.05.2010 to show that prosecution has purposely not produced Station Diary Entry No. 194 of 1989 which was summoned by the trial judge and for producing the same letter was also sent to the Senior Superintendent Of Police but same was not produced and on 24.05.2010 the learned trial judge observed regarding non -production of the said Sanha. At this juncture it would be necessary to reiterate that in the case occurrence had taken place long back on 08.05.1989 and though charge -sheet was submitted in the month of November, 1989 and also cognizance order was passed on 18.11.1989 about more than six months time was consumed in getting the case committed to the court of Sessions and thereafter more than two years time was consumed for framing of charge. After framing of charge evidence commenced and by 22.04.1993 three prosecution witnesses were examined and thereafter for several years no progress could take place. Thereafter on 25.05.2007 P.W. 4 could be examined and finally last prosecution witness i.e. P.W. 7 was examined and discharged on 05.06.2008. On 25.07.2008 statement of accused persons under Section 313 of the Cr.P.C. was recorded in which they claimed to be innocent and the case was fixed for defence evidence. On behalf of defence three witnesses were examined and last D.W. 3 was finally examined



and discharged on 07.11.2008. Till closure of the defence case no such plea was taken for summoning Station Diary Entry which in normal course is not summoned. The plea for summoning the said record was raised when argument had commenced. Obviously after lapse of such a long time it was not possible for the prosecution to produce the same. The so-called Station Diary Entry was prepared on 09.05.1989 and for the first time the defence wanted to summon the said Station Diary Entry which was recorded in the year 1989 in the month of October, 2009 i.e. almost after more than 20 years. Moreover in a case in which there is credible and reliable oral evidence corroborated by medical evidence merely non- production of Station Diary Entry may not frustrate the entire prosecution case.

23. During the trial 3 defence witnesses were examined. It would be necessary to examine the evidence of defence witnesses: D.W. 1 / Sukhdeo Upadhyaya, D.W. 2 - Upendra Prasad and D.W. 3 / Krishna Prasad all have not disputed regarding the occurrence. They are co-villagers and all of them have stated that occurrence had taken place in the evening in between 5-6 P.M. which is the case of the prosecution but they took plea that after hearing the sound of firing they rushed to the place of occurrence. Near the house of Ram Ekbal Gope



(deceased) they had heard the sound of firing however they took the plea that at the place of occurrence along with those witnesses all the accused persons also went. The evidence of defence witnesses also corroborates regarding the occurrence, time of occurrence and also presence of all the appellants at the time of occurrence. On examination of defence witnesses it is established that prosecution had rightly alleged that occurrence had taken place in between 5-6 P.M. in the evening on the date of occurrence and presence of all the accused persons has been reiterated by defence witnesses. It is true that at the time of argument learned counsels for the appellants in both the Appeals have not referred to the evidence of defence witnesses however for just decision in the matter we have examined the evidence of defence witnesses also.

24. In view of aforesaid facts and circumstances and specific evidence particularly evidence of P.W. 3 / Chandrawati Devi @ Chanpati Devi - informant & wife of the deceased, post-mortem examination report (Ext. 5), evidence of P.W. 7 / Dr. Uma Shankar Prasad who conducted post-mortem examination as well as evidence of Investigating Officer / P.W. 6 we are of the considered opinion that the learned trial judge has committed no error in passing the judgment of conviction and sentence.



25. In view of the entire evidence which we have discussed hereinabove we are of the opinion that the learned Trial Judge has committed no error in passing the judgment of conviction and sentence and as such there is no need to interfere with the same. Accordingly the judgment of conviction dated: 24th January, 2013 and sentence dated- 28th January, 2013 passed by Sri Sunil Kumar Sinha 'Mukul' , learned Adhoc Additional Sessions Judge – II, Patna in Sessions Trial No. 258 of 1990 [arising out of Dhanarua P.S. Case No. 62 of 1989] is approved and both the Appeals are dismissed.

26. Two appellants in Cr. Appeal (D.B.) No. 191 of 2013 are on bail and since judgment of conviction has been approved they are directed to surrender before the court below forthwith failing which the learned Trial Judge may take all steps for securing attendance of the aforesaid appellants for serving their sentence.

(Rakesh Kumar, J)

(Arvind Srivastava, J)

praful/-

AFR/NAFR	AFR
CAV DATE	N.A.
Uploading Date	29-11-2018
Transmission Date	29-11-2018

