

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.469 of 2013

Arising Out of PS. Case No.-66 Year-2005 Thana- KARPI District- Jehanabad

=====

Satyendra Sharma , Son Of Late Ram Naresh Sharma @ Manu Singh, R/O
Village- Karpidih, P.S. Karpi, District Arwal

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

=====

with
Criminal Appeal (DB) No. 321 of 2013

Arising Out of PS. Case No.-66 Year-2005 Thana- KARPI District- Jehanabad

=====

Manish Kumar, Son of late Ram Pravesh Sharma, resident of Village - Anua,
P.S. Karpi (Banshi), District -Arwal

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

=====

Appearance :

(In Criminal Appeal (DB) No. 469 of 2013)

For the Appellant/s : Sri Shivendra Prasad, Advocate

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

(In Criminal Appeal (DB) No. 321 of 2013)

For the Appellant/s : Sri Shivendra Prasad, Advocate

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 : 31-08-2018

1. Appellants in the aforesaid two Appeals were tried
together, convicted and sentenced by a common judgment in
Sessions Trial No. 198 of 2008 / 84 of 2012 , and as such, both the



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

2. Both the appellants by judgment dated : 18.03.2013 were convicted for commission of offence 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”) and by order dated – 20.03.2013 under Section 302/34 of the I.P.C. both were sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs. 20,000/- each. Under Section 27 of the Arms Act both were sentenced to undergo rigorous imprisonment for three years and to pay a fine of Rs. 5,000/- each. In case of default of payment of fine they were directed to further undergo rigorous imprisonment for six months under Sections 302/34 of the I.P.C. and two months imprisonment under Section 27 of the Arms Act. All the sentences were directed to run concurrently. The judgment of conviction and sentence was passed by learned Ad-hoc Additional Sessions Judge IV, Jehanabad in Sessions Trial No. 198 of 2008 / 84 of 2012 [arising out of Karpi P.S. Case No. 66 of 2005].

3. Short fact of the case is that on 30.06.2005 at 8.00 A.M. in Karpi Police Station Sub Inspector of Police Sri B.K. Verma (P.W. 7) recorded fardbyan of Vijay Kumar (P.W. 4) of



Village - Jaikaran Bigha, P.S. – Parasbigha , District – Jehanabad.

In the fardbyan the informant disclosed that he and Gaya Yadav , aged about 35 years (deceased), S/o Karu Yadav, resident of village -Jaikaran Bihga , Shivdahin Thakur (P.W. 5) resident of village - Ajad Nagar, Nehalpur and three children on 29.06.2005 at 15.00 Hours [3.00 P.M.] hiring an Armada Jeep bearing Registration No. JHO6A9034 had gone to village- Mangabigha to the house of Shyamnandan Yadav (not examined). On 30.06.2005 at 6.45 A.M. Gaya Prasad Yadav (deceased) after bidagari of his daughter- Sushma Devi (P.W. 2) proceeded for Jaikaranbigha. At about 7.30 A.M. while they reached by the said Armada Jeep near Karpi Bus Stand suddenly one person having fair complexion, average height, wearing pant & shirt came in front of the vehicle and stopped it. He forcibly took key of the vehicle from the driver. Another accused who was tall, dark complexioned wearing kurta pajama from his pistol fired on him, however it misfired. The informant after opening the gate from front side started fleeing away, however , though accused tried to caught hold of him but he escaped and fled away. Even from backside firing was made but it did not hit him. He stated that firing continued and when he returned after some time then Shivdahin Thakur (P.W. 5) and Sushma Devi (P.W. 2) told that



accused persons had given shot of firing on left hand , left chest and waist of Mukhiya Gaya Yadav due to which he died. About 6-7 miscreants belonging to “Ranveer Sena” had killed and fled towards Western side . The informant further stated that he and Shivdahin Thakur amongst the accused persons identified : (1) Satyendra Sharma [appellant in CR. APP (DB) No. 469 of 2013] of village -Karpidih (2) Putun Sharma, resident of village - Karpidih (3) Shyam Sharma, S/o Fakira Sharma, resident of village - Sendhwa, P.S. – Parasbigha. Informant claimed that Satyendra Sharma (appellant) and Putun Sharma both resident of village - Karpidih, Shyam Sharma, S/o Fakira Sharma, resident of village -Sendhwa and four unknown accused persons conspiring with each other had gunned down Mukhiya Gaya Yadav. His fardbyan was recorded in presence of Shivdahin Thakur [P.W. 5] and Ram Babu Yadav [not examined]. After reading and understanding the same to be correct the informant put his signature. On the said fardbyan signature of Ram Babu Yadav (not examined) and L.T.I. of Shivdahin Thakur (P.W. 5) was obtained. On the basis of the said fardbyan on 30.06.2005 immediately at 8.00 A.M. itself a formal F.I.R. vide Karpi P.S. Case No. 66 of 2005 was registered for the offence under Sections 302/341/34 of the I.P.C., Section 27 of the Arms Act and Section



17 of the Criminal Law Amendment Act, 1961 (hereinafter referred to as the “C.L.A. Act”) against : (1) Satyendra Sharma ; (2) Shyam Sharma and (3) Putun Sharma and four unknown accused persons.

4. During investigation accused - Shyam Babu Sharma @ Shyam Sharma was arrested and charge-sheet on 14.04.2006 was submitted against the said accused keeping investigation pending against others. After submission of charge- sheet on 25.05.2006 learned Chief Judicial Magistrate took cognizance of offence, however since Shyam Sharma absconded his case was separated. In the case on 30.09.2007 supplementary charge -sheet was submitted against both the appellants showing appellant /Satyendra Sharma as absconder. The case of both the appellants was committed to the court of Sessions on 23.05.2008 and it was numbered as Sessions Trial No. 198 of 2008 / 84 of 2012. On 06.06.2008 jointly charge under Section 341, 302/ 34 of the I.P.C., Section 27 of the Arms Act and Section 17 of the C.L.A. Act were framed against both the appellants.

5. To establish its case from the prosecution side altogether twelve witnesses were examined. Out of twelve witnesses, P.W. 2 - Sushma Kumari [daughter of deceased], P.W. 4 - Vijay Kumar Yadav (informant and nephew of deceased) and



P.W. 5 (Shivdahin Thakur) were examined as eye witnesses to the occurrence. P.W. 10 (Ram Binay Thakur) who was running a hair cutting saloon near the place of occurrence though was examined and not supported the prosecution case, was not declared hostile. P.W. 1 (Baidyanath Prasad) who was also shown to be eye witness and companion of the informant and other eye witnesses and occupant of the said Jeep since did not support the case was declared hostile. P.W. 8 (Harendra Kumar Singh) – driver of the Armada Jeep in question and P.W. 9 (Anil Kumar) were also declared hostile . P.W. 7 (Bimal Kumar Verma) who recorded fardbyan and major portion of the case was investigated by him handed over charge of the investigation to P.W. 11 -Umesh Kumar Singh, Officer- in- charge of Karpi Police Station who submitted charge- sheet no. 37 of 2006 against one of the accused namely: Shyamnandan Sharma, not appellant before this court and he also described in the said charge-sheet regarding death of one another F.I.R. named accused person namely- Putun Sharma, whose name was incorrectly mentioned by this Investigating Officer as Kutumb Sharma. P.W. 6 (Upendra Kumar Mishra) was the third Investigating Officer, who did not do anything in respect of investigation and P.W. 3 (Ram Charitra Mandal) was the 4th Investigating Officer who submitted charge- sheet and recorded



confessional statement of appellant /Manish Kumar [appellant in CR. APP (DB) No. 321 of 2013] . P.W. 12 (Dr. Dharendra Prasad Singh) on 30.06.2005 was posted as Medical Officer, Sadar Hospital , Jehanabad who conducted post- mortem examination on the dead body of the deceased and proved post-mortem examination report, which was marked as Ext. 5. After completion of prosecution evidence statement of appellants / accused under Section 313 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the “Cr.P.C.”) was recorded in which they claimed to be innocent and also claimed that they were falsely implicated. From the defence side no witness was examined.

6. Sri Shivendra Prasad, learned counsel for both the appellants after placing entire evidences has argued that on the basis of evidence on record it appears that actually none had seen the occurrence, however, a case was falsely fabricated as if occurrence had taken place in presence of P.W. 2 (Sushma Kumari) , P.W. 4 (Vijay Kumar) and P.W. 5 (Shivdahin Thakur). He submits that even in the evidence of the aforesaid three so-called eye witnesses there are apparent inconsistencies which suggest that they were not actual ocular witness. According to Sri Prasad, learned counsel for the appellants the manner in which



the deceased was said to be gunned down does not find support from medical evidence nor from inquest report. It has been argued that as per prosecution case Gaya Prasad Yadav, while was inside the vehicle in question along with three children, P.W. 2 and P.W. 5 he was indiscriminately fired upon by accused persons and this was the reason that on the person of the deceased six fire arm injuries were noticed. Out of six injuries ; injury nos. 1 and 2 were communicating to each other i.e. one entry wound and one exit wound. Similarly, injury nos. 3 and 4 were communicating to each other and injury nos. 5 and 6 were communicating to each other. He submits that the post- mortem examination report suggests that all the three bullets which pierced the body of the deceased had exited from the body. According to Sri Prasad had it been the manner of occurrence the Investigating Officer would have noticed some fired cartridges in the vehicle itself. He further submits that the Investigating Officer is completely silent as to whether glass of the vehicle was broken or not, nor he has mentioned as to whether on the vehicle he noticed blood or not.

7. It has been argued that had it been a case that deceased was gunned down in the vehicle, on the vehicle there was every possibility of finding huge clotted blood but in the case nothing has been indicated by the Investigating Officer nor it has



been indicated in the inquest report, whereas inquest report was prepared as if dead body was found on the vehicle itself. He further submits that the Investigating Officer in his evidence has stated that after recording fardbyan he went to the place of occurrence and he tried to develop a case that he found three fired cartridges at the place of occurrence, but to the reasons best known to the Investigating Officer no seizure list was prepared nor such fired cartridges were ever produced during trial . Accordingly, as per learned counsel for the appellants the manner of the occurrence does not find support either from medical evidence or even from inquest report.

8. Learned counsel for the appellants further has argued that P.W. 2 who has claimed to be ocular witness in her evidence has not whispered regarding the name of either of the appellants but suddenly after about five years from the date of occurrence when she was being examined as P.W. 2 on 01.02.2010 claims to have identified both the appellants in dock, which appears to be improbable.

9. Sri Shivendra Prasad, learned counsel for the appellants has further argued that F.I.R. itself appears to be ante-dated. To substantiate this submission, he has firstly taken us to Ext. 5 i.e. post-mortem examination report of the deceased -



Gaya Yadav. By way of referring to the post-mortem examination report he submits that post-mortem examination report though contains Challan No., there is no mentioning of F.I.R. No. of the case. It is the case of the prosecution that after the occurrence dead body was brought to the Police Station where inquest report was prepared and thereafter F.I.R. was lodged immediately at 8.00 in the morning on the date of occurrence and in inquest report i.e. Ext. 4 F.I.R. No. is appearing but post-mortem which had taken place subsequent to lodging of the F.I.R. does not contain the number of F.I.R. He further submits that suspicion of ante-dating of the F.I.R. is further corroborated from the fact that though F.I.R. was shown to be drawn on 30.06.2005 the F.I.R. was received in the court on 4th July, 2005 without any plausible explanation. In sum and substance, it has been argued that it appears that deceased, since was having criminal antecedent and was active member of the banned Organization i.e. C.P.I. (ML) and he was named accused in the murder of Ex-Mukhiya who had defeated him, he was done to death by someone else and the appellants belonging to the same caste i.e. the caste of Ex-Mukhiya who was gunned down has been implicated in the present case . He submits that the deceased was F.I.R. named accused in Case No. 49 of 2003 relating to murder



of Ex –Mukhiya / Ram Ekbal Sharma. This fact has come in the evidence of the Investigating Officer (P.W. 7). In sum and substance it has been argued that the occurrence was witnessed by none and subsequently, the appellants were fabricated as accused alleging therein as if appellants were members of one another banned group i.e. “Ranveer Sena”.

10. Sri Ajay Mishra, learned Additional Public Prosecutor has vehemently opposed the Appeal. He submits that on examination of the evidence of P.W. 5 , who is an independent witness, it is evident that it was specific case in which aforesaid two appellants with other accused persons had actively participated and gunned down the father of P.W. 2 namely, Gaya Prasad Yadav. He further submits that oral evidence of P.W. 5 has been corroborated in the medical evidence. He submits that it was specific case of prosecution that while the deceased after bidagari of his daughter was coming on vehicle the said vehicle was intercepted and indiscriminate firing was made. Against each of the appellants the witness has categorically stated that they gave shot of firing on Gaya Prasad Yadav and this is the reason that those injuries were noticed by the doctor who conducted post-mortem examination. He submits that altogether three entry wounds of fire arm were found on the person of the deceased and



it is specific case of prosecution that the two appellants and one another had given one shot each on the deceased. According to Sri Ajay Mishra, learned A.P.P. since the judgment of conviction is based on ocular evidence corroborated by medical evidence, this court may refrain from interfering with the same.

11. Besides hearing learned counsel for the parties, we have also examined the materials available on record. Before proceeding, it would be necessary to firstly examine what informant has deposed during trial. Informant namely: Vijay Kumar Yadav was examined as P.W. 4. He during evidence has proved his signature on the fardbyan, which was marked as Ext. 2 and he also proved the signature of one Ram Babu, who had also signed on the fardbyan, which was marked as Ext. 2/1. In his evidence he stated that on 30.06.2005 at 7.30 morning occurrence had taken place. He was coming from Mangabigha with Shivdahin (P.W. 5), Gaya Mukhiya [deceased], daughter of Gaya Mukhiya namely- Sushma Devi (P.W. 2), three children of Gaya Singh i.e. Manish, Sachin and Satish. All were coming on Armada Jeep. When they reached near Karpi Bus Stand one person suddenly stopped the vehicle and took out the key. This witness had occupied front seat of the vehicle. He saw that the accused had taken out pistol and fired. Bullet hit Gaya Mukhiya.



Putun Sharma, Satyendra Sharma [appellant in CR. APP. (DB) No. 469 of 2013] and Shyam Sharma were also there. They had fired. Satyendra Sharma (appellant) shot fire on Gaya Mukhiya which hit on his left hand and left chest. Shot of firing made by Shyam Sharma hit left thigh of Gaya Mukhiya whereupon Gaya Mukhiya died instantaneously. Accused persons fled away. Daroga Ji recorded his fardbyan over which he put his signature. Along with him Ram Babu Yadav (not examined) put his signature and Shivdahin Thakur put his L.T.I. He proved his signature on the fardbyan, which was marked as Ext. 2 and signature of Ram Babu, which was marked as Ext. 2/1. He also claimed to identify appellant / Satyendra Sharma who was present in court and also claimed to identify other accused. In paragraph – 6 of his cross -examination he stated that after opening the door of the vehicle he fled towards Northern side about 5-10 Yards and stayed. While he tried to flee, on him also firing was made which misfired. Second firing was not made. However, at this juncture it is necessary to notice that P.W. 5 (Shivdahin Thakur) who has also claimed to be eye witness in paragraph - 9 of his cross -examination has stated that as soon as vehicle stopped accused persons tried to apprehend Vijay (P.W. 4), however Vijay anyhow fled and he returned back after 5-10 minutes. If



the evidence of P.W. 5 is treated as correct, the evidence of informant (P.W. 4) appears to be doubtful. Meaning thereby that there is specific contradiction in the evidence of P.W. 4 and P.W. 5 and both have claimed to be eye witness to the occurrence. This witness i.e. P.W. 4 in paragraph - 7 of his cross- examination has further stated that in his presence firing was going on and he was not frightened and he was simply standing there . He stated that thereafter some of the passers- by assembled there, however he did not name anyone. In paragraph -8 of his cross -examination he has stated that he had occupied left hand side seat from the driver's seat on the vehicle. In paragraph -13 of his cross-examination he accepted that deceased -Gaya Yadav was his uncle and he denied the suggestion that deceased was a veteran criminal and active member of “ माले ”. The credibility of this witness comes under the cloud particularly on this very point since the Investigating Officer (P.W. 7) in categorical term has stated that the deceased was F.I.R. named accused in the murder of Ex- Mukhiya Ram Ekbal Sharma. Besides this in his fardbeyan this witness has given some what different picture about the occurrence.

12. P.W. 2 - Sushma Kumari (daughter of the deceased) examined on 01.02.2010 has also claimed to be eye



witness to the occurrence. In her evidence she stated that while she along with deceased and others were coming on the said vehicle i.e. Armada Jeep, accused - Shyam Sharma stopped the vehicle and Shyam Sharma himself fired on Gaya Yadav. She stated that at the place of occurrence accused- Putun Sharma and Satyendra Sharma were also present. Besides them there were other accused persons whom she could not identify and all the accused persons were carrying pistol. After gunning down, accused persons exhorted that Gaya Prasad of “ माले ” has already been murdered. Despite the fact that she made specific statement that in the occurrence Shyam Sharma had given shot of firing on her father, P.W. 2 contrary to her evidence has stated as if both the appellants had also opened fire in the occurrence and this witness surprisingly after about five years from the date of occurrence though had not named the appellants claims to identify them in dock. We are of the opinion that it is true that identification in dock is admissible but in such a case in which occurrence had taken place about five years back and appellants were not earlier known to them, such identification has got no significance. Even in cross-examination P.W. 2 has reiterated that the vehicle was stopped by Shyam Sharma. In paragraph - 6 of her cross-examination she further stated that for the first time she had seen



the appellants in dock. This witness has also denied the suggestion that deceased (her father -Gaya Prasad) was a man of Party and he was accused in number of cases. She denied the suggestion that deceased was a leader of “ माले ” Party.

13. P.W. 5 (Shivdahin Thakur) who has also claimed to be eye witness and occupant of the vehicle has given an entirely different story. In his evidence he stated that while they reached in the vehicle near Karpi Bus Stand accused -Putun Sharma stopped the vehicle and took out the keys. Appellant /Satyendra Sharma shot Gaya Ji Mukhiya. He stated that Satyendra Sharma was resident of village -Karpidih. Manish Sharma (appellant) also gave shot of firing on Gaya Mukhiya. One shot was given by Putun Sharma on Gaya Mukhiya. This witness remained sitting in the said vehicle. He further stated that after stopping the vehicle Putun Sharma and Shyam Sharma tried to caught hold of Vijay Ji (P.W. 4) , however he fled away. Then Satyendra (appellant) , Manish (appellant), Putun shot firing on Gaya Ji. He further deposed that he remained seated in the vehicle itself and by way of seating he witnessed the entire episode. Thereafter, accused persons raising slogan of Ranveer Sena fled away. He also claimed to identify both the appellants in dock. In cross-examination in paragraph - 10 of his cross- examination he stated



that he was resident of village- Ajad Nagar and it was about 6-7 Kosh (i.e. 18-21 KM) away from the village - Anua. It is clarified that village - Anua is the village of appellant -Manish. In the same paragraph he further stated that from his village, Karpidih by crossing is about 6-7 Kosh (about 18-21 KM). This witness in paragraph - 13 of his cross-examination denied the suggestion that against deceased -Gaya Prasad there was court case and he had gone to jail. He stated that deceased was Mukhiya but he denied that he was active member of भा.क.पा (माले) CPI (ML). This witness in paragraph -17 of his cross- examination has further denied the suggestion that the deceased was accused in the murder of Mukhiya - Ram Ekbal Sharma, whereas fact remains that as per the evidence of Investigating Officer the deceased was F.I.R. named accused in the case relating to murder of Ex-Mukhiya- Ram Ekbal Sharma.

14. In the case, though Baidyanath Prasad (P.W. 1) was shown as witness to the occurrence and also Harendra Kumar Singh [driver of the vehicle] as eye witness, they did not support the prosecution case, and as such, they were declared hostile. Similarly, P.W. 10 (Ram Binay Thakur) who was running a hair cutting saloon near the place of occurrence has not supported the prosecution case.



15. Dr. Dharendra Prasad Singh (P.W. 12) on 30.06.2005 was posted as Medical Officer, Sadar Hospital, Jehanabd and member of the joint team who conducted post-mortem. He conducted post- mortem along with one Dr. Deepak Kumar on the same day on the dead body of Gaya Yadav and found the following ante -mortem injuries:-

“ (1) Lacerated wound 1” x 1” x deep at posterior surface of left elbow with margin inverted and blackening around.

(2) Lacerated wound 1 ½ x 1 ½ x deep at ventral surface of left elbow with margin everted.

Injury no. (1) was communicating with injury no. (2).

(3) Lacerated wound ¼” x 1/4” inter thoracic cavity deep at right lower part of chest with margin inverted.

(4) Lacerated wound ½” x ½” x abdominal cavity deep at left side of upper part of abdomen with margin everted.

Injury No. (3) was communicating with injury no. (4).

(5) Lacerated wound ¾” x ¾” x abdominal cavity deep at upper and left of sacral area with margin inverted and blackening around.

(6) Lacerated wound 1 ¼” x 1 ¼ ” x abdominal cavity deep at epigastric region with margin everted.

Injury no. 5 was communicating with injury no. 6.

(2) On dissection of the dead body - Thoracic right lung was lacerated and pale. Left lung was also lacerated and pale. Thoracic cavity is having blood and blood clots.

Abdominal cavity – liver was lacerated and pale. Spleen was pale and intact.

Both kidneys were pale and intact.

Abdominal cavity having blood and blood clots.

Stomach was digested and urinary bladder – empty.



(3) Cause of the death – Haemorrhage & shock due to above injuries.

Time since death – within 24 hours

In our opinion – death was due to haemorrhage and shock caused by fire arm

(4) Rigor mortis was present in the dead body”

He proved the post- mortem examination report, which was marked as Ext. 5. In cross -examination he stated that injury nos. 1, 3 and 5 are entry wounds and injury nos. 2, 4 and 6 were exit wounds. In his evidence doctor has not stated regarding the time of conducting post- mortem examination. Even on perusal of the post- mortem examination report we have not noticed the time of conducting post mortem –examination. Even post- mortem examination report does not contain the No. of F.I.R., whereas, it was the case of the prosecution that after the occurrence which had occurred on the vehicle i.e. on Armada Jeep, the dead body immediately within 10 minutes from the time of occurrence was carried to Police Station and at 8.00 itself F.I.R .was lodged and thereafter, dead body was sent for post -mortem through dead body Challan. In the post -mortem examination report Challan No. has been mentioned but F.I.R. No. has not been incorporated. In such situation, the argument advanced by learned counsel for the appellants that F.I.R. was ante- timed or ante - dated appears to be more probable. In the case



once after drawing F.I.R. dead body was sent for post -mortem examination there was every possibility to mention the Case No. i.e. Karpi P.S. Case No. 66 of 2005 in the post- mortem report along with the number of dead body Challan. In such situation there was every possibility to notice the case number in the post -mortem report. After F.I.R., if it was drawn on 30.06.2005, it was required to be received in Court immediately, but in this case without any explanation it was received in the court on 4th July, 2005. In this case on examination of the evidence, it appears that prosecution has miserably failed to establish the place of occurrence also. If the place of occurrence was Karpi Bus Stand then the Investigating Officer should have noticed some articles at the place of occurrence, however, though the Investigating Officer has stated that he had seized three fired cartridges at the place of occurrence, he had not bothered to prepare seizure list nor the seized fired cartridges were ever produced during the trial. So far prosecution case is concerned it appears that it was claimed that the deceased was done to death while he was in Armada Jeep. If he was gunned down inside the vehicle the Investigating Officer would have certainly noticed some damage on the vehicle, however nothing has been indicated. He has also not noticed clotted blood on the vehicle, otherwise it was



necessary for the Investigating Officer to indicate that he had noticed blood or not. As per post-mortem examination report it is a case that three bullets pierced the body of deceased and exited from his body. Meaning thereby that fired cartridges would have been recovered from the vehicle itself. All those things has not been stated by the Police. It appears that purposely those facts were suppressed. Learned counsel for the appellants has rightly argued that it appears that the deceased who was having criminal antecedent and an active member of C.P.I. (ML) Organization and also F.I.R. named accused in the murder of Ex -Mukhiya Ram Ekbal Sharma and thereafter he had occupied the post of Mukhiya, might had been killed somewhere else and his dead body was carried to Police Station on the Armada Jeep and thereafter, a case was fabricated as if these appellants were involved in the present case .

16. In this case four Police Officers / Investigating Officers were examined as prosecution witness, who are P.W. 3 (Ram Charitra Mandal), P.W. 6 (Upendra Kumar Mishra) , P.W. 7 (Bimal Kumar Verma) and P.W. 11 (Umesh Kumar Singh) . Of – course, four Police Officers have been examined as Investigating Officer, on examination of the evidence of P.W. 7 (Bimal Kumar Verma) we are of the opinion that his evidence would be sufficient



for deciding the present case since he had recorded the fardbyan and major portion of the case was investigated by him. In his evidence he proved the fardbyan. This Officer was posted on the date of occurrence as Officer –in- charge of Karpi Police Station. He recorded fardbyan and proved it, which was marked as Ext. 3. He also proved the inquest report, which was marked as Ext. 4. On examination of Ext. 4 it appears that dead body was found on the Armada vehicle. In the inquest report i.e. Ext. 4 there is nothing regarding finding of any material such as blood, clotted blood, pellets / fired cartridges etc. found near the dead body. In paragraph - 3 he stated as if at the place of occurrence he found and he had seized two fired cartridges, however, no seizure list was prepared by him nor fired cartridges were ever produced during the trial. In paragraph- 8 of his evidence he accepted that deceased was an active member of C.P.I. (ML). In paragraph- 12 of his cross -examination he stated that informant in his re-statement has given the name of accused persons. Earlier he had given only description of the accused persons. If the Investigating Officer himself states that only in re-statement the informant had disclosed the name of accused and earlier he had only given description, there was no reason to mention the name of accused persons with their parentage and addresses in the fardbyan or



F.I.R. This also substantiates the submission of learned counsel for the appellants that F.I.R. was ante-dated. This has again been reiterated in paragraph -14 of his cross-examination that witnesses - Sushma Devi (P.W. 2) , Harendra Kumar (not examined), witness - Manish Yadav had only given description of the accused not named anyone . In paragraph - 16 of his cross-examination he stated that deceased (Gaya Yadav) was active member of C.P.I. (ML) which he had written, however he was not aware as to whether he was member of Dasta of the said Organization or not. The deceased (Gaya Prasad) was having criminal antecedent and he was having information that one case i.e . Case No. 49 of 2003 dated 15.6.2003 registered for offence under Section 302 and other allied Sections of the I.P.C., Section 27 of the Arms Act and Section 17 of the C.L.A. Act relating to murder of Ram Ekbal Sharma, the deceased was accused. He further clarified in paragraph - 20 of his cross-examination that during investigation he did not enquire as to whether appellants were relatives of Ram Ekbal Sharma or not. He denied the suggestion that deceased - Gaya Yadav was a veteran criminal and he was murdered by someone else and the appellants were falsely implicated.



17. On examination of aforesaid evidences we are of the opinion that there is substance in the argument of learned counsel for the appellants that the occurrence was not seen by any of the witnesses and the manner of occurrence i.e. relating to gunning down of Gaya Prasad Yadav does not find support either from medical evidence or any other evidence. Besides this, non plausible explanation regarding receipt of F.I.R. on 4th July, 2005 in a case in which F.I.R. was drawn on 30th June, 2005 also creates serious doubt on the prosecution case. There is apparent contradictions in the evidence of the so-called three eye witnesses, and as such, we are left with no option but to interfere with the judgment of conviction and sentence.

18. Accordingly, the judgment of conviction dated : 18.03.2013 and sentence dated- 20.03.2013 passed by Sri Mohamad Irshad Ali, learned Adhoc Additional Sessions Judge IV, Jehanabad in Sessions Trial No. 198 of 2008 / 84 of 2012 (arising out of Karpi P.S. Case No. 66 of 2005) is hereby set aside and both Appeals are allowed.

19. Since appellant / Manish Kumar in CR. APP (DB) No. 321 of 2013 is on bail, he is discharged from liability of his bail bond. Appellant /Satyendra Sharma is in custody. He is directed to be released forthwith, if not wanted in any other case



since judgment of conviction and sentence has already been set aside.

20. Both Appeals are allowed.

(Rakesh Kumar, J)

(Arvind Srivastava, J)

praful/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	08-09-2018
Transmission Date	08 -09-2018

