

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.136 of 1995

1. Triveni Singh son of Late Mushan Singh @ Mukhan Singh
2. Lalu Singh son of Triveni Singh
Both residents of village Nayagaon Bariarpur, P.S. Desari, District Vaishali

... .. Appellant/s

Versus

STATE OF BIHAR

... .. Respondent/s

with
CRIMINAL APPEAL (DB) No. 190 of 1995

1. Sanjay Sharma son of Late Kailash Sharma
2. Kamal Sharma son of Kishundeo Sharma
both resident of village – Hardoi, P.S. Desari, District Vaishali at Hajipur

... .. Appellant/s

Versus

STATE OF BIHAR

... .. Respondent/s

Appearance :

(In CRIMINAL APPEAL (DB) No. 136 of 1995)

For the Appellant/s : Mr. Niranjana Kumar, Advocate

For the Respondent/s : Mr. S.C.Mishra, APP

(In CRIMINAL APPEAL (DB) No. 190 of 1995)

For the Appellant/s : Mr. Niranjana Kumar, Advocate

For the Respondent/s : Mr. D.K.Sinha, APP

**CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR
SRIVASTAVA**

and

HONOURABLE MR. JUSTICE PRABHAT KUMAR SINGH

ORAL JUDGMENT

**(Per: HONOURABLE MR. JUSTICE HEMANT KUMAR
SRIVASTAVA)**

Date : 16-07-2019

Heard learned counsel Mr. Niranjana Kumar,
Advocate, appearing for appellants as well as learned Additional
Public Prosecutor Mr. S.C.Mishra.

2. Both the above stated criminal appeals have



arisen out of impugned judgment of conviction dated 31.05.1995 and sentence order dated 02.06.1995 passed by learned 2nd Additional Sessions Judge, Vaishali at Hajipur (hereinafter referred to as "trial court") in Sessions Trial No. 178 of 1993 by which and whereunder the learned trial court convicted the appellants in Cr. Appeal (DB) No. 190 of 1995 for the offence punishable under Section 302 of the Indian Penal Code and the appellants in Cr. Appeal (DB) No. 136 of 1995 for the offence punishable under Section 302/109 of the Indian Penal Code and, furthermore, all the above stated appellants were convicted for the offence punishable under Section 302/34 of the Indian Penal Code. However, appellants in Cr. Appeal (DB) No. 190 of 1995 were acquitted of the charge framed under Section 27 of the Arms Act. Accordingly, appellants in Cr. Appeal (DB) No. 190 of 1995 were sentenced to undergo imprisonment for life for the offence punishable under Section 302 of the Indian Penal Code and, similarly, appellants in Cr. Appeal (DB) No. 136 of 1995 were sentenced to undergo imprisonment for life for the offence punishable under Section 302/109 of the Indian Penal Code and, furthermore, all the above stated appellants were sentenced to undergo imprisonment for life for the offence punishable under Section



302/34 of the Indian Penal Code. However, all the sentences were ordered to run concurrently. Since both the above stated appeals have been emerged out from impugned judgment of conviction and sentence order, common judgment is being passed in both the above stated criminal appeals.

3. Briefly stated the prosecution case is that P.W.5, namely, Jamuna Singh, gave his *fard-e-beyan* to P.W. 9 on 15.9.1992 at 2.30 P.M. at village Bariarpur, to this effect, that on the same day at about 12:00 noon, while he along with his grandson Guddu @ Birendra Singh (deceased) was going to purchase medicines and reached in front of house of Raghunath Sah, he noticed that Sanjay Sharma, Kamal Sharma, Triveni Singh and Lalu Singh were standing towards south side of road. He, further, claimed that when he as well as his grandson reached near the aforesaid persons, Triveni Singh and Lalu Singh ordered the others to kill Guddu and, thereafter, Sanjay Sharma opened fire of his country-made pistol, which hit on the chest of Guddu. Having sustained firearm injury, Guddu ran from there raising alarm but fell down on north side of the *Chat* of the road and started wriggling in pain. He, further, claimed that Kamal Sharma went running near Guddu and opened fire of his country-made pistol on the back head of Guddu, as a result



whereof, Guddu died then and there. The aforesaid persons after committing the murder of Guddu fled away from there. P.W. 9, further, claimed that the aforesaid occurrence was witnessed by Shiv Kumar Singh (P.W.4), Raghunath Rai (P.W.6), Birju Singh (not examined) as well as several other persons. P.W. 5, further, claimed that four months ago Kailash Sharma, the father of appellant Sanjay Sharma, was killed and he as well as his son, namely, Umesh and his grandson, namely, Vijay Singh, were made accused in the aforesaid case and the appellants committed the murder of his grandson Guddu @ Birendra Singh due to above stated enmity. The *fard-e-beyan* of P.W. 5 has been marked as Ext. 6.

4. On the basis of aforesaid *fard-e-beyan*, Desari P.S. Case No. 125 of 1992 for the offences punishable under Sections 302/34 of the Indian Penal Code and 27 of Arms Act was registered on the same day and, thereafter, formal first information report was prepared against the appellants for the offences punishable under Sections 302/34 of the Indian Penal Code and 27 of Arms Act. The formal first information report and *fard-e-beyan* were sent to concerned court through special messenger but the same were reached to the concerned court on 18.9.1992.



5. P.W. 9 – Syed Quamrul Haque, took charge of investigation. He prepared inquest report, inspected the place of occurrence, seized empty cartridges, prepared seizure list and also seized bloodstained earth. P.W. 9 recorded the statements of witnesses and after completion of investigation submitted charge-sheet against appellants.

6. The cognizance of the offences was taken and the case was committed to the court of sessions, in usual way.

7. The appellants were put on trial and, appellants in Cr. Appeal (DB) No. 190 of 1995 stood charged for the offences punishable under Sections 302 of the Indian Penal Code and 27 of the Arms Act whereas appellants in Cr. Appeal (DB) No. 136 of 1995 stood charged for the offences punishable under Sections 302/109 of the Indian Penal Code. However, all the four appellants stood charged for the offence punishable under Sections 302/34 of the Indian Penal Code. All the appellants denied the charges and claimed to be tried.

8. In course of trial, prosecution examined, altogether, ten prosecution witnesses and also got exhibited certain documents. The statements of appellants were recorded under Section 313 of the Cr.P.C., in which they denied the prosecution story. However, no evidence was adduced by the



appellants in support of their defence but from perusal of statements recorded under Section 313 of the Cr.P.C. as well as trends of cross-examination of prosecution witnesses, we find that defence of the appellants was total denial of the prosecution story.

9. Learned trial court after evaluating the prosecution evidence, passed the judgment of conviction and sentence order, especially, having relied upon testimonies of P.W. 5, P.W. 8 and P.W. 9.

10. Learned counsel appearing for the appellants assailed the impugned Judgment of conviction and sentence order arguing that the learned trial court failed to appreciate materials available on the record in right perspective. He submitted that P.W. 9, very clearly, stated in his statement that he got information of the alleged occurrence through Chaukidar Dharamnath Thakur, who gave information to P.W. 9 that the grandson of P.W. 5 was killed by someone in front of house of Raghunath Sah and having got the aforesaid information, P.W. 9 made *Sanha* entry and went to the place of occurrence. Learned counsel submitted that the aforesaid information was first information report in respect of the alleged offence and the Chaukidar Dharamnath Thakur did not disclose the name of any



assailant nor disclosed the presence of P.W. 5 over place of occurrence. He submitted that the learned trial court wrongly refused to treat the aforesaid information of Chaukidar Dharamnath Thakur as first information report. He submitted, as a matter of fact, when deceased was killed, P.W. 5 was not present on the place of occurrence and that was the reason Chaukidar Dharamnath Thakur did not disclose the name of P.W. 5 before P.W. 9. He submitted that the prosecution did not produce Chaukidar Dharamnath Thakur, as a result whereof, serious prejudice was caused to defence and defence could not get an opportunity to elicit real fact from Dharam Nath Thakur.

11. Learned counsel of the appellants, next, submitted that the learned trial court disbelieved the testimonies of P.W. 4 and only on the testimony of P.W. 5 came to conclusion that it were appellants, who were involved in committing the alleged crime. He submitted that P.W. 5 admitted this fact that he as well as his sons and grandsons were accused in murder case of father of appellant Sanjay Sharma and, therefore, it was obvious from the evidence of aforesaid prosecution witness that there was enmity between appellants and P.W. 5. He, further, submitted that the learned trial court ignored the aforesaid enmity on flimsy ground and failed to take



note of this fact that it was unsafe to convict the appellants solely on the testimony of P.W. 5. He, further, submitted that P.W. 5 claimed before the trial court that at time of alleged occurrence, he was with the deceased and, admittedly, P.W. 5 was an accused in murder case of father of appellant Sanjay Sharma, whereas deceased was not accused in the aforesaid case but it is surprising enough that the appellant Sanjay Sharma as well as other appellants left the P.W. 5 and chose to commit murder of deceased, who was not involved in murder case of father of the appellant Sanjay Sharma.

12. Learned counsel of the appellants, next, submitted that the P.W. 5 admitted in his cross-examination that he did not even touch the dead body of deceased after alleged occurrence. He submitted that the aforesaid statement of P.W. 5 is against natural conduct of a human being because, admittedly, deceased was grandson of P.W. 5 and it is human nature that after the death of close family member, a human being shall express his grief by touching the body of deceased but P.W. 5 admitted that after the occurrence, though he went near the dead body of deceased but did not make any attempt to pick up the dead body of deceased. Learned counsel, further, submitted that the aforesaid conduct of P.W. 5 is unnatural and reflects that he



was not present on the place of occurrence when the occurrence took place and he reached over the place of occurrence after arrival of several persons as well as police officials and prior to his arrival over the place of occurrence the deceased had already been declared dead.

13. Learned counsel of the appellants, next, submitted that the postmortem report as well as statement of P.W. 8 also negates the claim of P.W. 5, because P.W. 5 admitted in his statement that deceased had taken his meal at 10:00 A.M. and, according to the prosecution case, alleged occurrence took place at 12:00 noon but it is surprising enough that no particles of meal either digested or semi-digested were found in the stomach of the deceased at the time of postmortem examination. He, further, submitted that P.W. 8, at paragraph 10 of his cross-examination, frankly, admitted that the deceased having sustained injury on his chest could not have walked whereas prosecution case is that the deceased having sustained injury on his chest ran towards *Chat* of the road and after that he fell down on the *Chat* of the road and, therefore, the aforesaid claim of prosecution also negates by the above stated statement of P.W. 8 and makes the claim of P.W. 5 doubtful.

14. He, further, submitted that, as a matter of



fact, the *fard-e-beyan* of P.W. 5 is a antedated document. He submitted that P.W. 5 and P.W. 9 claimed that the *fard-e-beyan* of P.W. 5 was recorded on 15.9.1992 at 2:30 P.M., i.e., within two and half hours of the alleged occurrence and on the same day formal first information report was drawn up. He, further, submitted that the formal first information report goes to show that the formal first information report and *fard-e-beyan* were sent to the concerned court through special messenger but it is surprising enough that the *fard-e-beyan* and formal first information report reached to the court on 18.9.1992. Learned counsel of the appellants submitted that, as a matter of fact, the *fard-e-beyan* of P.W. 5 was prepared by the police when the postmortem report of deceased was received. He submitted the statement of P.W. 8 goes to show that the postmortem report was prepared on 16.9.1992 at 11.35 P.M. he, further, submitted that the above stated delay of reaching the formal first information report and postmortem report was not explained by the prosecution but the learned trial court did not take note of the aforesaid fact.

15. Learned counsel of the appellants, next, submitted that the learned trial court based his judgment on sole testimony of P.W. 5 but it was unsafe to place reliance upon



sole testimony of P.W. 5, especially, in the back drop as stated above and, therefore, the appellants should be given benefit of doubt.

16. On the other hand, learned Additional Public Prosecutor supported the impugned judgment of conviction and sentence order and submitted that in course of trial, P.W. 4 and P.W. 5 claimed themselves to be eye witness of the alleged occurrence and they have, specifically, stated that it were appellants, who committed the murder of deceased. He submitted that the P.W. 9 proved the place of occurrence and he seized empty cartridges as well as bloodstained earth from the place of occurrence and, therefore, it can be easily be held that the prosecution succeeded to prove the place of occurrence. He, further, submitted that so far as manner of occurrence is concerned, P.W. 4 and P.W. 5, specifically, stated the manner in which the deceased was killed. Learned Additional Public Prosecutor, further, submitted that although the learned trial court did not place reliance upon the testimony of P.W. 4 but even then there was sufficient evidence against the appellants to prove their guilt and, therefore, there is no need to interfere into the impugned judgment of conviction and both the appeals are liable to be dismissed.



17. Having heard the above stated rival contentions of the parties, we went through the record along with Lower Court Records.

18. It is obvious from perusal of Lower Court Records that only P.W. 4 and P.W. 5 have claimed to have seen the alleged occurrence. However, learned trial court refused to place reliance upon the testimony of P.W. 4 as P.W. 4 claimed before the trial court that on the alleged date of occurrence, he was going to Ganj Chowk to purchase fertilizer but the aforesaid statement was not made by him before P.W. 9 in course of investigation. Furthermore, P.W. 4 had not claimed himself to be eye witness of actual killing of the deceased, therefore, in our view, the learned trial court rightly refused to place reliance upon the testimony of the P.W. 4.

19. P.W. 5, Jamuna Singh, is the informant and he also claimed himself to be eye witness of the alleged occurrence. This witness claimed that on the alleged date of occurrence at about 12:00 noon, he along with the deceased was going to purchase medicines and when he as well as deceased reached in front of house of Raghunath Sah, the appellants, who were standing there from before, came and at the order of appellant Triveni Singh and Lalu Singh, appellant Sanjay



Sharma shot fire, which hit on the chest of deceased Guddu, who having sustained injury fell down on the *Chat* situated towards north side of pitch road and after that Kamal Sharma fired of his pistol on back of head of deceased Guddu. On being cross-examined by the defence, this witness at paragraph 18 of his cross-examination stated that deceased Guddu was 2-3 steps from behind him at the time of occurrence, whereas the appellants were at the distance of one *Laggi* towards south side from them. This witness, further, admitted that he did not sustain any splinters of the said firearm. This witness, further, admitted that deceased Guddu did not sustain any injury while he was running after having sustained first injury. He, further, admitted that there was distance of one and half *Laggi* between the place where first injury was sustained by the deceased as well as the place where second injury was sustained by the deceased Guddu. This witness admitted that when Guddu sustained second injury, he went near him but the persons, who had assembled there, prevented them to touch the deceased. This witness, further, stated that Guddu died immediately after having sustained injury and that was the reason, he was not taken to hospital. This witness, further, admitted that he requested the people, who had assembled there, to permit him to



see the dead body of the deceased. He also admitted that when police came there, the dead body of the deceased was taken out from the ditch. This witness also admitted that he did not sign any seizure list. He has also admitted that he as well as deceased left home at 10:00 A.M. and before leaving the home, deceased Guddu had taken his meal. This witness also admitted that deceased Guddu had no enmity with appellant Sanjay Sharma.

20. The perusal of statement of this witness goes to show that this witness was accused in murder case of father of appellant Sanjay Sharma. Furthermore, the statement of this witness goes to show that appellant Sanjay Sharma has no grudge against the deceased. The statement of this witness also goes to show that after the occurrence, he did not take any step to pick up the deceased so that deceased could be taken to hospital. Although this witness claims that deceased died then and there after having sustained firearm injury but conduct of this witness appears to be quite unnatural because the deceased was his grandson but even then, he did not take pain to pick up the deceased for taking him to hospital.

21. P.W. 8, Dr. K.P. Rai, is doctor, who had conducted postmortem examination of the deceased. This witness states that he did postmortem examination on the corpus



of deceased on 16.9.1992 and found the following injuries:-

“ Lacerated wound with blackened irregular margin on the right side of the head above and back of the right ear; size $\frac{1}{2}$ " x $\frac{1}{2}$ " x cranial cavity.

Lacerated wound with blanked irregular margin on the left side of the chest just above the nipple size – $\frac{1}{2}$ " x $\frac{1}{2}$ "x chest charity directed backward.

On dissection – on opening the cranial cavity brain is found pale. Blood and blood clots present in the cranial cavity. This is a fracture of right parietal bone as a result of injury no. 1. Bone found into multiple pieces. Causing late ration of the brain matter and menages. Few small metallic pillets are found embedded in the right site of the brain.

On opening the chest cavity, he found it full of blood and blood clots. There is fracture of fourth rib of the right side. Right lower chamber of the heart is lacerated. Few metallic pieces are found in the right chambers of the heart.

On opening the abdomen, all the abdominal viscera found pale.

Substance used - firearm.”

This witness claims that time elapsed since death is within 24 hours from the time of conducting postmortem examination and this witness opined that deceased died due to shock and haemorrhage as above noted injuries, which were



sufficient for death in ordinary course of nature. This witness proved the postmortem report as Ext. 5. On being cross-examined, this witness admitted that he started the postmortem examination at 9.00 A.M. and received the dead body at 11:30 P.M.. This witness, further, admitted that rigor mortis was present but there was no sign of decomposition. He, further, admitted that after sustaining the injury No. 2, victim could not have walked. This witness, further, admitted that the injury could be possible by gun shot injury. This witness, further, admitted that he did not find 8 M.M. cartridge. This witness also expressed his ignorance to say as to whether the injury found on the deceased were possible by firing of 8 M.M. cartridge. This witness also admitted that blackening can also be possible, if it is fired from not a very long distance but charring can be caused by very close distance.

22. Perusal of statement of this witness goes to show that two firearm injuries were found on the person of the deceased and due to the aforesaid firearm injury, the deceased died. Furthermore, the statement of this witness goes to show that deceased having sustained firearm injury on his chest was not in a position to walk.

23. P.W. 9 is the Investigating Officer. This



witness says that on 15.9.1992, Dharamnath Thakur Chaukidar informed him that grandson of Jamun Singh was shot dead by someone in front of house of Raghunath Sah and several people assembled over the place of occurrence. This witness having got the aforesaid information entered Sanha No. 353/92 and went to the place of occurrence. This witness claims that he recorded the *fard-e-beyan* of P.W. 5 at the place of occurrence. This witness, further, states at paragraph 7 of examination-in-chief that he sent the dead body of the deceased for postmortem examination along with Chaukidar and other police officials. He, further, states that he inspected the place of occurrence and found one empty cartridge of 8 M.M. near an electric pole. He seized the aforesaid empty cartridge of 8 M.M.. He found the dead body of deceased lying on the *chat* towards north side of road and he also found copious blood there. He seized the bloodstained earth. But being cross-examined by the defence, this witness admitted that Chaukidar Dharamnath Thakur gave information to him on 15.9.1992 at 1:30 P.M. He, further, admitted that he did not register any case on the basis of information of Dharamnath Thakur. He, further, admitted that he did not record the statement of Chaukidar Dharamnath Thakur. He also admitted that he left the Police Station at 1.30 P.M. for going to



the place of occurrence. He admitted that the distance between the place of occurrence and the Police Station was about 7 K.M.. He, further, stated that the concerned officer In-charge of Police Station did not handover the statement of Chaukidar Dharamnath Thakur to him but he copied *Sanha* from Station Diary. He, further, admitted at paragraph 22 of his cross-examination that while he was going to place of occurrence, some persons also informed him about the killing of deceased but he did not record the statement of those persons. He, further, stated that he reached over the place of occurrence where he found that there was huge crowd of more than thousand persons. He, further, stated that he prepared inquest report at 3:00 P.M.. He, further, admitted at paragraph 31 of his cross-examination that he noticed that the blood on the head of deceased had already been clotted. He also admitted that he removed the clotted blood and saw the wound of firearm on the head of the deceased. He, further, admitted that he recorded the *fard-e-beyan* in front of door of Raghunath Sah and prepared the seizure list and inquest report etc. on the same place. He, further, admitted that there were several houses nearby the place of occurrence but he did not record the statement of the persons of vicinity. He, further, admitted that



he searched the family members of Raghunath Sah but they were not found. He also admitted that he did not mention the aforesaid fact in the case diary.

24. On perusal of entire relevant evidence of the prosecution, we find that according to the prosecution case, the alleged occurrence took place at 12:00 noon and the *fard-e-beyan* of P.W. 5 was recorded at 2.30 P.M.. It is also manifest that prior to recording the *fard-e-beyan* of P.W. 5, one Chaukidar Dharamnath Thakur gave information to Officer-in-charge of concerned Police Station as well as P.W. 9 in respect of the occurrence and in the aforesaid information, Chaukidar Dharamnath Thakur did not disclose the name of assailants nor disclosed about the presence of P.W. 5 over the place of occurrence though the aforesaid Chaukidar Dharamnath Thakur stated before P.W. 9 as well as concerned Officer-in-charge that a mob had assembled over the place of occurrence. Furthermore, we find that P.W. 9 admitted in his deposition that while he was going to place of occurrence, he met several persons, who disclosed before him about the occurrence but those persons also did not name the assailants of the deceased. No doubt, it was not necessary for the police to register a case on the basis of information given by Chaukidar Dharamnath



Thakur but non-disclosure of presence of P.W. 5 over the place of occurrence by either Chaukidar Dharamnath Thakur or the persons, who met P.W. 9 prior to recording of *fard-e-beyan* of P.W. 5 creates some doubt about the claim of P.W. 5 and the aforesaid fact indicates that the P.W. 5 was not present along with deceased when the occurrence took place. Furthermore, we find that the P.W. 5 was accused in murder case of father of appellant Sanjay Sharma and according to the claim of P.W. 5, he was with deceased at the time of alleged occurrence. P.W. 5 has admitted in his examination-in-chief that appellant Sanjay Sharma had no grudge against deceased and, therefore, there was no occasion for appellant Sanjay Sharma to commit the murder of deceased Guddu. Had the appellant Sanjay Sharma wanted to take revenge of murder of his father, he would have certainly chosen the P.W. 5 to kill if P.W. 5 was present there. Therefore, the aforesaid circumstance also creates doubt about the presence of P.W. 5 over the place of occurrence.

25. It is an admitted case that the *fard-e-beyan* and formal first information report reached to the court on 18.9.1992, i.e., after three days of the occurrence and no explanation in respect of the aforesaid delay has been given by the prosecution. Admittedly, the postmortem examination on the



corpus of the deceased was done on 16.9.1992 and, therefore, there appears to be some substance in contention of learned counsel of the appellants that the *fard-e-beyan* of P.W. 5 was prepared after perusing of the postmortem report of the deceased.

26. It is true that the judgment of conviction can be based on solitary evidence of prosecution witness and there is no need of corroboration of the statement of solitary witness, if his statement inspires confidence to the court but for the present case, as we have discussed that P.W. 5 have inimical term with the appellants and there are several infirmities in the prosecution case and, therefore, in our view, it is very difficult to place reliance upon the solitary evidence of P.W. 5. It is an admitted case that the deceased was killed in broad day light and there were several houses near the place of occurrence. The P.W. 9 has admitted that the road on which the occurrence took place was a very busy road but it is surprising enough that not a single independent witness of the vicinity came forward to support the prosecution case nor the Investigating Officer took pain to record the statements of the witnesses of vicinity of the place of occurrence.

27. Therefore, in the aforesaid circumstance, we



are of the view that the prosecution could not succeed to prove its case beyond all shadow of reasonable doubts and the impugned judgment of conviction and sentence order cannot be sustain in the eye of law.

28. On the basis of aforesaid discussion, this criminal appeals are allowed and the impugned judgment of conviction and sentence order are, hereby, set aside. The appellants are acquitted of the charges framed against them giving benefit of doubt. The appellants are on bail. They are discharged from the liabilities of their bail bonds.

(Hemant Kumar Srivastava, J)

(Prabhat Kumar Singh, J)

Spd/-

AFR/NAFR	AFR
CAV DATE	NA
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