

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.273 of 1994

(Against the Judgment of conviction and order of sentence dated 18.04.1994 and 19.04.1994,
respectively, passed by the 8th Additional Sessions Judge, Bhojpur, Arrah in S.T No. 213 of 1990)

1. Sidhu Singh, son of Sheoratan Singh, resident of village-Jogta, P.S. Chandi, District – Bhojpur (Arrah) (Since deceased)

2. Ajay Singh, son of Ram Prasad Singh, Resident of village – Jogta, P.S. Chandi, District – Bhojpur (Arrah).

... .. Appellants

Versus

The State of Bihar

... .. Respondent

with

Criminal Appeal (DB) No. 274 of 1994

1. Khaderan Singh, son of Pila Singh (since deceased)

2. Ram Prasad Singh, son of Baiju Singh,

3. Harnath Singh, son of Rajballabh Singh, All resident of village Jogta, P.S. Chandi, District – Bhojpur (Arrah).

... .. Appellants

Versus

The State of Bihar

... .. Respondent

with

Criminal Appeal (DB) No. 287 of 1994

Langtu Singh, Son of Vrigunath, resident of village Jogta, P.S. Chandi, District – Bhojpur (Arrah).

... .. Appellant

Versus

The State of Bihar

... .. Respondent

Appearance :
(In Criminal Appeal (DB) No. 273 of 1994)

For the Appellant/s	:	Mr. Ashutosh Jha, Advocate Mr. Bijoy Kant Mishra, Advocate Mr. Avinav Kumar, Advocate Mr. Narendra Pandey, Advocate
For the Informant	:	Mr. Vindh Keshari Kumar, Sr. Advocate Mr. Suraj Bansh Roy, Advocate
For the State	:	Mr. Shivsh Chandra Mishra, APP Mr. Dilip Kumar Sinha, APP

(In Criminal Appeal (DB) No. 274 of 1994)

For the Appellant/s	:	Mr. Ashutosh Jha, Advocate Mr. Bijoy Kant Mishra, Advocate Mr. Avinav Kumar, Advocate Mr. Narendra Pandey, Advocate
For the Informant	:	Mr. Vindh Keshari Kumar, Sr. Advocate Mr. Suraj Bansh Roy, Advocate
For the State	:	Mr. Dilip Kumar Sinha, APP



(In Criminal Appeal (DB) No. 287 of 1994)

For the Appellant/s : Ms. Sweta Raj, Amicus Curiae
For the Respondent/s : Mr. Dilip Kumar Sinha, APP

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

**and
HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA
ORAL JUDGMENT**

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

Date : 10-01-2019

All the above stated three criminal appeals have arisen out of Judgment of conviction and sentence order dated 18.04.1994 and 19.04.1994, respectively, passed by learned 8th Addl. Sessions Judge, Bhojpur, Arrah in Sessions Trial No. 213 of 1990 and, accordingly, all the above stated criminal appeals are being disposed by this common Judgment.

2. The appellant Langtu Singh in Criminal Appeal (DB) No. 287 of 1994 has been found guilty for the offence punishable under Section 302 read with Section 149 of the Indian Penal Code and Section 27 of the Arms Act, whereas, remaining appellants were found guilty for the offence punishable under Section 302 read with Section 149 of the Indian Penal Code. Appellants Ajay Singh and Sidhu Singh in Criminal Appeal (DB) No. 273 of 1994 have also been found guilty for the offence punishable under Section 323 of the Indian Penal Code and, accordingly, all the appellants have been sentenced to undergo Rigorous Imprisonment for life for



the offence punishable under Section 302 read with Section 149 of the Indian Penal Code, whereas, appellant Langtu Singh in Criminal Appeal (DB) No. 287 of 1994 has been, further, sentenced to undergo Rigorous Imprisonment for seven years for the offence punishable under Section 27 of the Arms Act and, similarly, appellants Ajay Singh and Sidhu Singh have been sentenced to undergo Rigorous Imprisonment for one year for the offence punishable under Section 323 of the Indian Penal Code. However, all the sentences were ordered to run concurrently.

3. It is pertinent to note here that two accused, namely, Rup Narayan Singh @ Rupan Singh and Jamadar Singh were acquitted from the charges framed against them for the offence punishable under Sections 302 read with Section 149 and 323 of the Indian Penal Code by the same impugned Judgment.

4. It is also pertinent to note here that appellant No.1 Sidhu Singh in Criminal Appeal (DB) No. 273 of 1994 and appellant No.1 Khaderan Singh in Criminal Appeal (DB) No. 274 of 1994 died during the pendency of the appeals and, accordingly, their appeals stood abated. It is further pertinent to note here that one co-convict Nanhak Singh had



filed separate appeal bearing Criminal Appeal (DB) No. 288 of 1994, but the aforesaid Nanhak Singh, too, died during the pendency of the appeal and, accordingly, his appeal was also abated. Now, there are only three appellants, but it is not out of place to mention here that the appellant No.2, namely, Ajay Singh in Criminal Appeal (DB) No. 273 of 1994 raised the plea of juvenility before this Court and after due and proper inquiry, the Juvenile Justice Board, Arrah found him that at the time of alleged occurrence, he was juvenile.

5. Briefly stated, the prosecution case is that on 04.12.1989 at 12.45 P.M. at Sadar Hospital, Arrah, P.W.12 Nand Kishore Singh gave his fardbeyan to P.W.15 Rajnandan Ram, the then Police Officer of Chandi Police Station, to this effect that on the same day at about 8.00 A.M., his brother Raj Kumar Singh (deceased) had gone towards north side of the village to attend the call of nature and when he reached near Khalian, appellant Langtu Singh armed with gun, appellants Sidhu Singh (since deceased), Ram Prasad Singh, Baiju Singh, Ajay Singh, Nanhak Singh (since deceased), Khaderan Singh (since deceased), appellant Harenath Singh all armed with Lathi came there and encircled his brother Raj Kumar Singh and thereafter, appellant Ram Prasad Singh exhorted to kill



and, thereafter, Raj Kumar Singh raised alarm, which attracted Umesh Singh (deceased), the wife of informant Sumitra Devi (P.W.8) and mother of informant Shayam Sundari Devi (P.W.7), who went there running to save Raj Kumar Singh, but appellant Langtu Singh opened fire on Umesh Yadav, which hit on his abdomen, as a result of which, he fall down there and started wriggling. The other accused started raining lathies on Raj Kumar Singh. The informant, further, claimed that Sidhu Singh (since deceased) assaulted his mother, as a result of which, she sustained injury on her palm, whereas, appellant Ajay Singh assaulted his wife as a result of which, she, too, sustained injury on her head. Informant further claimed that his brother Raj Kumar Singh having sustained injury fell down there and became senseless. On hue and cry, witnesses Lalan Singh (P.W.4), Satrugan Singh (P.W.2), Raj Kumar Singh (not examined), Paddam Singh (P.W.3) and Laxman Singh (P.W.9), too, came there and witnessed the occurrence. The informant, further, claimed that after the alleged occurrence, the injured were taken to Akhagaon Bazar and from there they were taken to Sadar Hospital, Arrah, but while the injured were being taken to Sadar Hospital, Umesh Yadav died on his way and he was declared brought dead by



the Doctor of Arrah Sadar Hospital. The Doctor of Sadar Hospital, Arrah having noticed the critical condition of injured Raj Kumar Singh referred him to Patna and, thereafter, injured Raj Kumar Singh was taken to Patna. The informant, further, claimed that one year ago to the alleged occurrence, his pumping set was stolen from his Khalihan and a doubt was raised against the appellants and others in respect of the missing of pumping set and for that reason, a Panchayati was held and that was the reason, the appellants and other accused committed the alleged crime.

6. On the basis of fardbeyan of Nand Kishore Singh, Chandi P.S. Case No. 73 of 1989 for the offences under Sections 147, 148, 149, 302, 307 and 323 of the Indian Penal Code and Section 27 of the Arms Act was registered and, accordingly, formal F.I.R. was drawn up against the appellants and others for the above stated offences on the same day i.e. on 04.12.1989. During course of investigation injured Raj Kumar Singh also died.

7. P.W.15 Raj Nandan Ram took the charge of investigation. He visited the place of occurrence, recorded the statements of witnesses and seized several Lathies from the houses of Khaderan Singh and Nanhak Singh respectively. He



received the injury reports and postmortem report etc. and after completion of the investigation submitted Chargesheet against the appellants and others. The cognizance of the offence was taken and the case was committed to the Court of Session in usual way. Altogether, nine persons including appellants were put on trial and, accordingly, they stood charged for the offences punishable under Sections 302, 149 and 323 of the Indian Penal Code. However, appellant Langtu Singh stood charged, separately, for the offence punishable under Section 302 of the Indian Penal Code and Section 27 of the Arms Act. The appellants and other accused denied the charges and claimed to be tried .

8. In course of trial, prosecution examined, altogether, 16 prosecution witnesses and also got exhibited postmortem report, inquest report etc. The statements of appellants and other accused were recorded under Section 313 of the Cr.P.C. in which they reiterated their innocence and denied the prosecution story. However, appellant Harnath Singh, specifically, stated in his statement recorded under Section 313 of the Cr.P.C. that he had lodged Chandi P.S. Case No. 75 of 1989 for the occurrence of the same day. The defence also got examined three defence witnesses and got proved



certain documents including the Fardbeyan of Chandi P.S. Case No. 75 of 1989. The appellants and other accused took defence that it was prosecution party, who came on the land of the appellant Harnath Singh and pressurized him and others to enter into the compromise in a case which had earlier been lodged and when appellant Harnath Singh refused to buckle upon the pressure of the prosecution party, Shatrughan Singh (P.W.2) opened fire which hit the Harnath Singh and to save the skin from the case lodged by Harnath Singh the prosecution party brought this case.

9. Learned trial court having evaluated the evidences available on the record rejected the story of defence and having relied upon the prosecution evidence convicted the appellants and others in the manner as stated above passing the impugned Judgment of conviction and sentence order.

10. Learned counsel Shri Ashutosh Jha, appearing in Criminal Appeal (DB) No. 273 of 1994 and Criminal Appeal (DB) No.274 of 1994 challenged the impugned Judgment of conviction and sentence order arguing that the learned trial court failed to appreciate the evidence available on the record in its right prospective as a result whereof the



learned trial court came to wrong conclusion. By elaborating his submission, learned counsel Shri Jha submitted that the learned trial court rejected the claim of defence on flimsy grounds, particularly, in the circumstance when P.W.15 clearly admitted in his deposition that he had recorded the Fardbeyan of appellant Harnath Singh and on the basis of his Fardbeyan Chandi P.S. Case No. 75 of 1989 was registered. He further submitted that D.W.1 Dr. Prasant Shankar Sinha proved the injury sustained by appellant Harnath Singh. He further submitted that Ext. E, the Fardbeyan of appellant Harnath Singh on the basis of which Chandi P.S. Case No. 75 of 1989 was registered, goes to show that on the same day, appellant Harnath Singh sustained firearm injury, but the aforesaid injury has not been explained by the prosecution witnesses in course of trial, rather, the prosecution tried to suppress the aforesaid fact. He further submitted that the injury found on the person of appellant Harnath Singh indicates that the prosecution has not come with clean hand before the court and, furthermore, the aforesaid injury of appellant Harnath Singh indicates that the prosecution has also changed the manner of occurrence because the presence of injury on the person of appellant Harnath Singh goes to show that the



alleged occurrence took place in different manner and not in the manner as claimed by the prosecution. He further submitted that the aforesaid lacuna of the prosecution case is fatal because the aforesaid fact clearly goes to show that the prosecution has brought the present case suppressing the real story of the occurrence.

11. Learned Counsel Shri Jha, further, submitted that that prosecution has come with a definite case that one year prior to the alleged occurrence, pump-set of the prosecution party was stolen and the prosecution party had raised suspicion against the appellants and others and that was the reason, the appellants and others committed the alleged crime. Learned counsel Shri Jha, submitted that in course of trial, prosecution failed to prove the aforesaid fact as a result whereof the prosecution could not succeed to establish the motive of the present occurrence. He further submitted that no doubt, it is not necessary that in each and every case prosecution should prove the motive of the occurrence, but when the prosecution has come with a definite story that the alleged occurrence took place on account of particular reason, it is the duty of the prosecution to prove the aforesaid reason and failure on the part of the prosecution to prove the alleged



reason shall be fatal for the case of the prosecution.

12. He further submitted that so many prosecution witnesses, in course of trial, claimed themselves to be eye witness of the alleged occurrence, but all the so called eye witnesses are related with each others and some of them are accused in Chandi P.S. Case No. 75 of 1989. Therefore, it is obvious that all the so called eye witnesses are either related witness or interested witness. He further submitted that no doubt, the testimony of related or interested witnesses cannot be discarded only on the ground being related and interested, but it is settled principle of law that the testimony of interested and related witnesses should be analyzed with care and caution. He further submitted that the defence claimed that for the occurrence of the same day, Chandi P.S. Case No. 75 of 1989 was lodged and in the aforesaid case some prosecution witnesses were accused and, therefore, it is quite natural that the aforesaid prosecution witnesses must be interested in getting conviction of the appellants and other accused in the present case, and, therefore, it is not safe to believe on the testimony of the aforesaid interested and related witnesses.

13. He further submitted that the prosecution



has come with specific story that when appellants and other accused encircled deceased Raj Kumar Singh, deceased Raj Kumar Singh raised alarm upon which deceased Umesh Yadav and others went running there and after that appellant Langtu Singh opened fire on deceased Umesh Yadav as a result whereof, he fell down on the earth and, thereafter, all the appellants and others i.e. total 6 persons, in number, started raining lathies on Raj Kumar Singh, who having sustained lathi injuries fell down on the earth. Learned counsel further submitted that the postmortem report of the deceased Raj Kumar Singh goes to show that the Doctor found only three injuries on the person of deceased Raj Kumar Singh and, therefore, the aforesaid contradiction also creates doubt about the manner of occurrence.

14. Learned counsel Shri Jha, further submitted that the prosecution also failed to prove the place of occurrence because according to the prosecution case, the alleged occurrence took place while deceased Raj Kumar Singh was going to attend call of nature and, furthermore, the deceased Raj Kumar Singh was encircled on passage, but no blood was found on the aforesaid passage, rather, the I.O. found blood in a field which supports the claim of the defence



that the appellant Harnath Singh sustained firearm injury while he was in his field.

15. Shri Jha, learned counsel further submitted that no doubt, the Investigation Officer P.W.15 claimed that some lathies were recovered from the houses of some of the appellants, but no blood stained was found on the aforesaid lathis nor the aforesaid lathis were sent to Forensic Science Laboratory, Patna for examination and, therefore, mere recovery of lathies from the houses of some the appellants does not support this fact that the aforesaid lathis had been used in committing the alleged crime.

16. Learned counsel Shri Jha further points out that the appellant no.2, namely, Ajay Singh in Criminal Appeal (DB) No. 273 of 1994 was juvenile at the time of alleged occurrence, but unfortunately, the claim of juvenility could not be taken in course of trial and the said plea was taken before this court. He further submitted that vide order dated 17.04.2018 this Court referred the claim of the aforesaid appellant, namely, Ajay Singh to the Juvenile Justice Board and sought for report from Juvenile Justice Board with regard to the actual age of appellant no. 2, namely, Ajay Singh in criminal Appeal (DB) no. 273 of 1994 at the time of trial. He



further submitted that in pursuant to the aforesaid direction, the Juvenile Justice Board conducted inquiry and submitted report to this court giving finding that the appellant no.2, namely, Ajay Singh was aged about 16 years 6 months at the time of alleged occurrence and as he was juvenile at the time of occurrence. Learned counsel Shri Jha, submitted that admittedly appellant no.2, namely Ajay Singh in Criminal Appeal (DB) No. 273 of 1994 has not been tried by Juvenile Court and, therefore, his entire trial stands vitiated. In support of his contention, he referred the decision rendered by the Division Bench of this court in ***Ashok Kumar Vs. The State of Bihar reported in 2018(3) PLJR page 817*** and submitted that in the aforesaid Judgment a Division Bench of this court has held that if a juvenile is not tried by a competent authority, his trial shall vitiate.

17. On the other hand learned Additional Public Prosecutor assisted by learned counsel for the informant supported the impugned Judgment of conviction and sentence order arguing that in the present case two persons were killed and P.W.2, P.W.3, P.W.4, P.W.6, P.W.7, P.W.8 and P.W.12 being eye witnesses of the alleged occurrence, clearly, supported the prosecution case. He further submitted that there was no



contradiction in the statements of the aforesaid prosecution witnesses as well as in postmortem report and moreover, even if, some minor contradictions occurred in the deposition of aforesaid prosecution witnesses, the said minor contradictions do not make any difference and only on the ground of minor contradictions, the testimony of the aforesaid eye witnesses cannot be discarded. He further submitted that moreover, P.W.7 and P.W.8 are injured witnesses and they, too, supported the prosecution case and, therefore their presence over the place of occurrence cannot be disputed.

18. Learned Additional Public Prosecutor as well as learned counsel appearing for the informant further submitted that, no doubt, the appellant Harnath Singh lodged Chandi P.S. Case No. 75 of 1989 for the occurrence on the same day but the defence failed to prove that the occurrence of Chandi P.S. Case No. 75 of 1989 took place at the same place where the occurrence of the present case took place and furthermore, the defence also failed to prove that Chandi P.S. Case No. 75 of 1989 took place in same transaction. He further submitted that if an occurrence does not take place in same transaction and the accused sustained injury in the said occurrence and the prosecution witnesses failed to explain the



injuries of the said accused, in that event, the prosecution case cannot be thrown out. He further submitted that, moreover, in the present case, the learned trial court on valid grounds rejected the story of defence. He further submitted that according to the defence case, the appellant Harnath Singh remained in PMCH for several days but it is surprising enough that his Fardbeyan was recorded on 09.12.1989 i.e. after 5 days of the alleged occurrence and no explanation of the aforesaid delay given taken by the defence. He further submitted that the doctor, who has been examined as defence witness, also failed to explain as to under which circumstance he referred Harnath Singh to PMCH and, moreover, no document of reference of appellant Harnath Singh was brought on record by the defence. He further submitted that all the aforesaid infirmities create doubt about the claim of the defence and the learned trial court, rightly, refused to believe upon the defence story.

19. Learned Additional Public prosecutor as well as learned counsel appearing for the informant further submitted that it was not necessary for prosecution in the present case to prove motive, because in the present case, so many eye witnesses including the injured witnesses supported



the prosecution story and claimed to have seen the appellants and others committing the alleged crime and, therefore, even if, it assumes for the shake of arguments that the prosecution failed to prove motive, as averred in the Fardbeyan, then also the failure of proving the motive does not make any difference because generally court puts burden upon the prosecution to prove motive in the cases which hinges upon circumstantial evidence.

20. Learned Additional Public Prosecutor, as well as learned counsel appearing for the informant further submitted that in course of trial, prosecution witnesses fairly admitted the institution of Chandi P.S. Case No. 75 of 1989, and they claimed that the defence brought Chandi P.S. Case No. 75 of 1989 with a view to save skin from the present case. They further submitted that admittedly, there was enmity between the parties and the prosecution witnesses admitted the above stated enmity and, therefore, the conduct of prosecution witnesses goes to show that they spoke true before the court and, therefore, even if, the prosecution witnesses failed to explain the injuries found on the person of appellant Harnath Singh, then also, the trustworthiness of the prosecution witnesses cannot be doubted.



21. Having heard the contention of both the parties, we went through the record along with the lower court's record. We shall first take this point as to whether the trial of appellant Ajay Singh in Criminal Appeal (DB) No. 273 of 1994 stood vitiated due to non tried by juvenile court or not? No doubt, in the case of Ashok Kumar vs. State of Bihar (supra), a Division Bench of this court has incidentally held that if a juvenile has not been tried by a competent authority, his trial shall vitiate. It is an admitted position in the present case that the appellant no. 2 namely, Ajay Singh along with other appellants was tried by a competent court i.e. by Additional Sessions Judge, who had jurisdiction to try the case of Section 302 of the Indian Penal Code. Therefore, even if, the appellant no. 2 was not tried by competent authority as described in Juvenile Justice Act, then also only on the aforesaid basis it cannot be said that the trial of the appellant no. 2 stood vitiated due to the aforesaid irregularity. Moreover, in the present case admittedly, in course of trial, plea of juvenility was not raised on behalf of appellant no.2, namely Ajay Singh and for the first time the plea of juvenility has been raised before this Appellate Court and, therefore, in the aforesaid circumstance also, we are of the opinion that due to the



aforesaid irregularity, the trial of the appellant no.2 cannot be said to be vitiated and only at this stage the appellant no.2 namely, Ajay Singh, can challenge the sentence imposed upon him by the impugned Judgment. Moreover, the case of ***Kamlendra Singh alias Pappu Singh v. State of M.P. reported in AIR 2013 Supreme Court 1783*** supports our view.

22. As we have already stated that altogether 16 prosecution witnesses were examined on behalf of the prosecution and it is obvious from perusal of the lower court's record that P.W.2, P.W.3, P.W.4, P.W.5, P.W.6, P.W.7, P.W.8, P.W.9, P.W.10 and P.W.12 claimed themselves to be eye witnesses of the alleged occurrence. Furthermore, P.W.7 and P.W.8 claimed that they had sustained injuries in the occurrence. P.W.1 is a formal witness, P.W.13, P.W.14 and P.W.16 are Doctors, whereas P.W.15 is Investigating Officer of this case.

23. First of all, we would like to deal with the evidence of P.W.15. This witness states in his examination-in-chief that on 04.12.1989, he was posted as Sub-Inspector of Police at Chandi Police Station and on that very date he got a rumour that an altercation had taken place in village Jogta in which some persons had sustained injuries and out of the



aforesaid injured, one person sustained firearm injury and all the injured were taken to Ara, Sadar hospital. This witness claims that he entered Sanha no. 48 dated 04.12.1989 and proceeded to Ara. This witness claims that he reached at Ara Sadar hospital and recorded the Fardbeyan of P.W.12. This witness proved the Farbdeyan of P.W.12 as Ext. 9. This witness also states that he prepared the inquest report of deceased Umesh Yadav in Ara Sadar hospital and after that recorded the further statement of P.W.12 and on the same day, he recorded the statement of Shyam Sundari Devi (P.W.7), Sumitra Devi (P.W.8) and one Sadhu Nandan Singh. This witness further claimed that he issued the injury reports of P.W.7 and P.W.8 and also noticed their injuries. This witness proved the requisition issued in respect of injuries of P.W.7 and P.W.8 as Ext.10 series. This witness further claims that having prepared the formal F.I.R. on the same day at about 4p.m., he reached at village Jogta and inspected the place of occurrence. This witness describes the place of occurrence at paragraph 4 of his examination-in-chief and states that the place of occurrence of the present case is a passage situated towards north side of house of one Bhulan Singh. He further says that the aforesaid passage comes from south side of the village and crossing the



door of P.W.12 goes straight north crossing the house of Bhulan Singh up to Badhar. This witness further claims that the house of P.W.12 was situated at the distance of 200 yards towards south side from the place of occurrence and there was open land between the house of appellant No. 12 and the place of occurrence. He specifically, states that between the place of occurrence and house of the P.W.12, there was field and Khaliyan. He also states that at the distance of 30-40 gaj towards west-south side from the place of occurrence, there was house and Dalan of Khaderan Singh. This witness further claims that adjacent west of the above stated passage, there was Telhan field of Ramadhar Yadav and in the aforesaid field, he found mustered plants. He further states that he found trampled plants towards both sides of aforesaid passage and he also found blood stained, but it was not possible to collect the blood stained as the villagers disclosed that after the occurrence, the appellants and other accused had poured water on the aforesaid blood stained. This witness states that at the distance of 8 to 9 yards towards north side of house of Bhulan Singh, he found mustered plants trampled. He also found that one brick of western wall of house of Jhulan was found broken on account of hitting by bullet. This witness



further states that in the east side of place of occurrence, there was house of Jhulan, in the west side of place of occurrence, there was field of Ramadhar Singh, in the north side of place of occurrence, there was passage going towards Bhulan and south side of place of occurrence, there was passage going towards village. He further states that in north side of place of occurrence, where Raj Kumar Singh had fallen down was field of Nand Kishore. In north side, there was house of Jhulan, in west side, there was field of Jhulan and in west side, there was passage. The aforesaid topography of place of occurrence goes to show that according to the prosecution case, the alleged occurrence took place on a passage, which was surrounded by fields and house of Bhulan Singh. P.W.15 did not find any blood on the aforesaid passage, rather, the blood was found on the grass, which was adjacent both sides of the passage. P.W.15, further, admits that in course of investigation, he got fardbeyan of Kaushal, which was recorded at Patna, which has been marked as Ext.11. This witness, further, admits that he did investigation of the counter case. He also admits that he did not find any pellets etc. on the place of occurrence. This witness also admits that he was informed that deceased Raj Kumar Singh had sustained injury in mustered field. He also



admits that he did not find any blood, scratch etc. on the seized Lathies. At para 13 of his cross-examination, this witness admits that appellant Harnath Singh was admitted at Patna in injured condition and he had taken the fardbeyan of Harnath Singh on 09.12.1989 and on the basis of his fardbeyan instituted Chandi P.S. Case No. 75 of 1989 for the offences punishable under Sections 147, 148, 149, 324 and 307 of the Indian Penal Code and Section 27 of the Arms Act.

24. P.W.15 at paragraph 13 of his cross-examination further states that after completion of investigation, he submitted Chargesheet in Chandi P.S. Case No. 75 of 1989. P.W.15 also describes the place of occurrence of Chandi P.S. Case No. 75 of 1989 at the above stated paragraph of his cross examination. He states that the place of occurrence of Chandi P.S. Case No. 75 of 1989 was the field of appellant Langtu Singh, which was situated in north side of Badhar after the house of appellant Khaderan Singh. P.W.15 further states that he found crop of potato in the aforesaid field and in the western corner of the aforesaid field there was a hand pump which was functional. This witness further admits that the appellant Harnath Singh had fallen down in mustered field and adjacent north to the aforesaid mustered field, there was



house of appellant Khaderan Singh. This witness further admitted at Paragraph 17 of his cross-examination that he had found appellant Harnath Singh in injured condition at PMCH, Patna and he had issued requisition to the injuries of appellant Harnath Singh.

25. The testimony of P.W.15 as well as Ext.D and Ext.E go to show that for the occurrence of the same day appellant Harnath Singh had lodged Chandi P.S. Case No. 75 of 1989 and the aforesaid Chandi P.S. Case No. 75 of 1989 was, too, investigated by P.W.15 who, subsequently, submitted Chargesheet in the aforesaid Chandi P.S. Case No. 75 of 1989. Furthermore, in the aforesaid Chandi P.S. Case No. 75 of 1989, the appellant Harnath Singh claimed that he had sustained fire arm injury. Ext. E goes to show that in the aforesaid Chandi P.S. Case No. 75 of 1989, Vikrama Singh alias Raj Kumar Singh, Banwari Singh, Shatrughan Singh, Alok Singh, Mithlesh Singh, Krishna Singh, Badan Singh, Umesh Singh and Kamlesh Singh were made accused. Admittedly, in the present case, Shatrughan Singh (P.W.2) and Ram Badan Singh (P.W.10) have been examined as prosecution witnesses. Now, it has to be seen what the prosecution witnesses have stated in respect of Chandi P.S. Case No. 75 of 1989 as well as in respect of injury of



appellant Harnath Singh. At paragraph 6 of cross examination of Shatrughan Singh(P.W.2), it has been admitted by the aforesaid P.W.2 that a case in respect of injury of appellant Harnath Singh was lodged and in the aforesaid case he was accused. This witness further admitted that in the aforesaid case police submitted Chargesheet, though suo motu this witness states that police submitted false Chargesheet in the aforesaid case. Paddam Singh (P.W.3) at paragraph 22 of his cross-examination stated that he had not seen any injury on the person of appellant Harnath Singh at the alleged date of occurrence nor had seen him in either Ara Sadar Hospital or in PMCH, Patna. This witness, specifically, stated that on the alleged date of occurrence, only the present occurrence had taken place. Lalan Singh (P.W.4) also stated at paragraph 15 of his cross-examination that he had not seen any injury on the person of appellant Harnath Singh on the alleged date of occurrence but near about after one week of the alleged occurrence, he came to know that one case had been lodged in respect of injury of appellant Harnath Singh. P.W.7 Shyam Sundari Devi at paragraph 11 of her corss-examination stated that she had not seen any injury on the person of appellant Harnath Singh on the alleged date of occurrence. She also



expressed her ignorance about the institution of the case by the appellant Harnath Singh against her family members. The attention of this witness was drawn towards her statement recorded under Section 161 of the Cr.P.C. and defence put a specific question that she had made statement before the police about the injury sustained by appellant Harnath Singh, but she denied. P.W.9 Laxman Singh admitted at paragraph 7 of his examination in chief that his nephew Kamlesh was not accused in the case which was lodged by appellant Harnath Singh. This witness also stated that he had not seen any injury on the person of appellant Harnath Singh on the alleged date of occurrence. However, he expressed his ignorance about this fact as to whether Harnath Singh got admitted himself in hospital having received firearm injury or not? It is pertinent to note here that Kamlesh Singh was made accused in Chandi P.S. Case No. 75 of 1989 and, therefore, the claim of this witness that Kamlesh was not made accused in Chandi P.S. Case No. 75 of 1989 is wrong and incorrect. P.W.10 Ram Badan Singh is father of P.W.2 Shatrughan Singh and the aforesaid fact has been admitted by him at paragraph 5 of his cross-examination. This witness admitted that he as well as his son Shatrughan Singh (P.W.2) were made accused in a case lodged by appellant



Harnath Singh. This witness also stated that he had not seen any injury on the person of appellant Harnath Singh on the alleged date of occurrence. This witness also stated that he had not seen Harnath Singh in hospital. P.W.12 is the informant of the present case. This witness states at paragraph 4 of his cross-examination that only one occurrence had taken place on the alleged date of occurrence and he had not seen any firearm injury or other injury on the person of appellant Harnath Singh. He expressed his ignorance about this fact as to whether appellant Harnath Singh had admitted in Ara hospital or not, but this witness admitted that after eight days of alleged occurrence, he came to know that the appellant Harnath Singh having prepared forged injury reports lodged case against him and others. This witness admitted that even after getting knowledge of above stated fact, he did not file any petition challenging the genuineness of injury report of appellant Harnath Singh. This witness at paragraph 5 of his cross-examination stated that he did not know as to whether Chargesheet in the aforesaid counter case was filed or not?

26. The above stated statements of relevant prosecution witnesses go to show that, although, some prosecution witnesses tried to deny the institution of Chandi



P.S. Case No. 75 of 1989 half heartedly but some of the prosecution witnesses admitted the institution of Chandi P.S. Case No. 75 of 1989. Moreover, the institution of Chandi P.S. Case No. 75 of 1989 on the basis of Fardbeyan of the appellant Harnath Singh is not in dispute and the same has been proved by Ext.-D and Ext-E. Furthermore, it is obvious that P.W.15, the Investigating Officer of the present case, admitted in his deposition that he had investigated not only the present case but also Chandi P.S. Case No. 75 of 1989 and P.W.15 further admitted in his cross-examination that he had seen the injury on the person of appellant Harnath Singh while he went to record the Fardbeyan of appellant Harnath Singh at PMCH, Patna.

27. D.W.1 Dr. Prasant Shankar Sinha was examined on behalf of the defence and this witness stated that on 04.12.1989 he was posted at PMCH, Patna as Resident Surgical Officer and on that very day one Harnath Singh son of late Rajballabh Singh, resident of village Jogta, P.S. Chandi, District – Bhojpur was admitted in his ward at about 5:40 P.M., who had been referred from Sadar Hospital Ara. This witness further stated that he examined the aforesaid injured and found that the primarily treatment of the aforesaid injured



was done at Sadar Hospital Ara and after that aforesaid patient was referred to PMCH for better treatment. This witness also stated that X-ray plates and X-ray report were also produced before him and the X-ray plates revealed the thorax of left side of the chest with a small round opaque shadow in the middle of left side chest. This witness proved his report as Ext. A. This witness also admitted that the aforesaid patient was discharged from the hospital on 21.11.1989. This witness also proved the bed head ticket. This witness, on being cross examined, stated that the above stated case was brought because of firearm injury. This witness expressed his inability to say who had referred the patient from Sadar Hospital Ara to PMCH as there was no document before him.

28. The aforesaid statement of D.W.1 goes to show that on 04.12.1989, the appellant Harnath Singh was not only examined at Ara Sadar Hospital but also at PMCH, Patna and there was firearm injury on the person of appellant Harnath Singh. Therefore, it is obvious that the defence has brought sufficient material to show that on the alleged date of occurrence, the appellant Harnath Sing had sustained firearm injury which was visible and apparent, but it is surprising enough that not a single prosecution witness tried to explain



the injury of appellant Harnath Singh and as well as tried to explain as to under which circumstance the appellant Harnath Singh sustained injury and, therefore, it appears that the prosecution has not come with clean hand and has concealed the real facts.

29. The prosecution case is that the alleged occurrence took place on passage, while the deceased Raj Kumar Singh was going to attend the call of nature as well as deceased Umesh Yadav came there to save the deceased Raj Kumar Singh. However, Ext. E goes to show that appellant Harnath Singh sustained firearm injury at his field, while he was doing some agricultural work along with Balmukund Singh. The present occurrence is said to have taken place at about 8.00 A.M. and, similarly, the occurrence of counter case is also said to have taken place in between 8.00 AM to 8.15 A.M. The appellant Harnath Singh claimed in his fardbeyan that the accused of the aforesaid case came at his field and pressurized him not to depose in a case, which had been lodged against them. It is obvious that both the occurrences i.e. the occurrence of present case as well as occurrence of counter case are said to have taken place at the same time on the same day. In the present case, the prosecution claims that the



occurrence took place at passage, whereas in counter case it is said that the occurrence took place in a filed. In this regard, P.W.9 Laxman Singh at para 10 of his cross-examination states that when he reached on the place of occurrence, he saw deceased Raj Kumar Singh, who was standing in a filed adjacent to the passage. P.W.8 Sumitra Devi, at para 6 of her cross-examination admitted that when she saw deceased Raj Kumar, he was standing in the filed of Telhan. The above stated statements of the prosecution witnesses go to show that at the time of alleged occurrence, deceased Raj Kumar Singh was standing in a filed and he sustained injury in the said filed and not on passage and the aforesaid fact prima facie supports the defence story and creates doubt about the claim of the prosecution case.

30. The prosecution has come with definite case that one year prior to the alleged occurrence pump set had been stolen and since the doubt was raised against the appellants and others, the appellants and other co-accused committed the alleged crime. Therefore, it is obvious from the aforesaid claim of the prosecution that on the alleged date of occurrence, there was no cause for the appellants and other accused to assault the deceased persons as well as other so



called injured and according to the prosecution case itself, the appellants and others committed the alleged occurrence due to an occurrence, which had taken place one year prior to the present case. However, the prosecution has not brought, even, a cheat of paper to show that any case of theft of pump set was lodged against appellants and others or even any other persons. The defence claimed that the prosecution party, being armed with deadly weapons, came on a field and pressurized appellant Harnath Singh not to depose in a case, which was lodged against the prosecution party and when the aforesaid appellant Harnath Singh refused, they committed the occurrence of Chandi P.S. Case No. 75 of 1989. The informant, Nand Kishore Singh (P.W. 12) at para 7 of his cross-examination expressed his ignorance about Sessions Trial No. 487 of 1996 in which deceased Raj Kumar and Shadhu Nand were accused. P.W.12 also expressed his ignorance about this fact that accused Balmukund and Baiju were witnesses in aforesaid Session Trial No. 487 of 1996. However, this witness admitted at the same paragraph that Baiju was the father of appellant Ram Prasad, whereas Balmukund was uncle of appellant Langtu. This witness denied this fact that he as well as Raj Kumar Singh were sureties in the aforesaid case.



Although, P.W.12 has denied regarding institution of any case lodged against deceased Raj Kumar Singh and Sadhu Nand, but the aforesaid fact prima facie proves that prior to alleged occurrence, a case had been lodged against deceased Raj Kumar Singh and Sadhu Nand and in the aforesaid case, Balmukund and Baiju were witnesses and, therefore, the aforesaid fact lends some strength to the defence case that on the alleged date of occurrence, the prosecution party pressurized appellant Harnath Singh not to depose in the case, which had been lodged against the prosecution party. Therefore, in our view, the prosecution failed to prove the motive, as assigned in the fardbeyan, rather, the materials available on the record prima facie support the claim of defence.

31. On the basis of the aforesaid discussions, in our view, the prosecution has not come with clean hand and suppressed the real facts which creates doubt about the manner of occurrence of the prosecution case and, therefore, in our view, the appellants are entitled to get the benefit of doubt.

32. On the basis of the aforesaid discussions, these criminal appeals are allowed and the impugned



Judgment of conviction and sentence order dated 18.04.1994 and 19.04.1994, respectively, passed by learned 8th Addl. Sessions Judge, Bhojpur, Arrah in Sessions Trial No. 213 of 1990 are, hereby, set a side. The appellants are acquitted of the charges giving benefit of doubt to them. The appellants are on bail. They are discharged from the liabilities of their bail bonds.

(Hemant Kumar Srivastava, J)

(Rajendra Kumar Mishra, J)

Manish/-Rahul

AFR/NAFR	N.A.F.R
CAV DATE	N.A.
Uploading Date	29.01.2019
Transmission Date	29.01.2019

