

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.114 of 1995

(Against the Judgment of conviction and order of sentence dated 29.04.1995 and 08.05.1994,
respectively, passed by the 6th Additional Sessions Judge, Bhagalpur in S.T No. 52 of 1994)

1. Sk. Jabir alias Tangur, son of Late Sk. Sultan, resident of village-Bhatoria, P.S. Nath Nagar, District-Bhagalpur.
2. Sk. Salim, son of Sk. Zahur, resident of village-Bhatoria, P.S. Nath Nagar, District-Bhagalpur (Since deceased)
3. Sk. Sajim, son of Sk. Moin, resident of village-Bhatoria, P.S. Nath Nagar, District-Bhagalpur.
4. Sk. Sahamat, son of Sk. Ali Jan, resident of village-Bhatoria, P.S. Nath Nagar, District-Bhagalpur.
5. Sk. Gholta, son of Sk. Jabir, resident of village-Bhatoria, P.S. Nath Nagar, District-Bhagalpur.

... .. Appellants

Versus

The State of Bihar,

... .. Respondent

with

CRIMINAL APPEAL (DB) No. 158 of 1995

Md. Khalique, son of Md. Multan, resident of village -Bhatoria, P.S. Nath Nagar, District-Bhagalpur.

... .. Appellant

Versus

The State of Bihar

... .. Respondent

with

CRIMINAL APPEAL (DB) No. 120 of 1995

Sk. Kalim, son of Sk. Ganauri, resident of village -Bhatoria, P.S. Nath Nagar, District-Bhagalpur.

... .. Appellant

Versus

The State of Bihar

... .. Respondent

Appearance :

(In CRIMINAL APPEAL (DB) No. 114 of 1995)

For the Appellants : Mr. Zeyaul Hoda, Advocate
For the State : Mr. Dilip Kumar Sinha, APP

(In CRIMINAL APPEAL (DB) No. 158 of 1995)

For the Appellant : Mr. Baxi S.R.P. Sinha, Sr. Advocate
Mr. Zeyaul Hoda, Advocate
For the State : Mr. S.N. Prasad, APP



(In CRIMINAL APPEAL (DB) No. 120 of 1995)

For the Appellant : Mr. Ansul, Advocate

For the State : Mr. S.C. Mishra, 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 : 12-04-2019

All the above stated appeals have arisen out of impugned Judgment of conviction and sentence order dated 29.04.1995 and 08.05.1995, respectively, passed by the learned 6th Addl. Sessions Judge, Bhagalpur in Sessions Trial No. 52 of 1994, by which and whereunder, he convicted all the appellants for the offences punishable under Sections 302 read with Section 149 of the Indian Penal Code and sentenced them to undergo imprisonment for life under the above stated Sections. Furthermore, appellant Md. Khalique, Md. Salim, Sk Sajim and Sk Shamat were found guilty under Section 27 of the Arms Act, but no separate sentence for the offences punishable under Section 27 of the Arms Act was passed. However, no separate finding regarding the offences punishable under Section 147 and 148 of the I.P.C. was given by the learned trial Court. Since, the aforesaid criminal appeals have arisen out of common Judgment of conviction and sentence order, therefore, all the aforesaid criminal appeals were taken en-block and accordingly, the above



stated criminal appeals are being disposed of by this common Judgment.

2. At the very outset, it is pertinent to note here that appellant No.2 in Criminal Appeal (DB) No. 114 of 1995, namely, Sk. Salim died during the pendency of the above stated criminal appeals and the Senior Superintendent of Police, Bhagalpur confirmed the death of the aforesaid appellant vide his letter No. 93, dated 24.02.2019. Accordingly, the Criminal Appeal (DB) No. 114 of 1995 filed on behalf of appellant No.2, namely, Sk. Salim stands abated in respect of the appellant No.2, namely, Sk. Salim only.

3. Briefly stated, the prosecution case is that on 06.08.1992 at about 4.30 A.M., P.W.4, namely, Md. Sahem gave his fardbeyan to P.W.10, namely, Deolal Ram at his house to this effect that in between night of 5/6-08-1992 at about 1.00 A.M., he woke up to urinate and saw that Sk. Mubarak, Sk. Khalique, Sk. Kalamul, Sk. Salim, Sk. Battu of his village having armed with three nut (country made pistol), Sk. Sajim, Sk. Sirajul, Sk. Mustaq having armed with double barrel gun, Sk. Sahamat having armed with rifle, Sk. Kalim having armed with big dagger, Sk. Abir @ Tengra and Sk. Gholta having armed with lathi entered in the court yard of his house and encircled his



brother Sk. Riyasat, who was sleeping on a cot at Verandah of his house and thereafter, Sk Mubarak caught the hands of his brother and pulled him down from the cot and shot fire of country made pistol. After that Sk. Khalique and Sk. Kalamul, too, fired and, thereafter, Sk. Kalim gave indiscriminate blows to Sk. Riyasat by means of big dagger. P.W.4, further, claimed that he made attempt to save his brother, but Sajim assaulted him by means of butt of gun on his left shoulder as a result of which he fell down there and after that Sk. Gholta assaulted him by means of lathi causing injury on his right thumb. He, further, claimed that his wife (P.W.3), too, rushed to save him, but Sk. Mustaq assaulted her with butt of gun as a result of which, she, too, sustained injury on his right knee. He, further, claimed that the wife of deceased Riyasat (P.W.7) also came to save the deceased, but she was pushed by the aforesaid accused persons. P.W.4 further claimed that his brother sustained several injuries and his intestine came out and having sustained injuries, he died then and there. The above stated persons after committing the occurrence, fled away through western lane. P.W.4 disclosed that there was land dispute between him and the above stated F.I.R. named accused since last five years and 10 to 11 months prior to the alleged occurrence, Sk. Kalamul, Sk. Salamul, Sk.



Khalique, Sk. Batto, Sk. Sajim etc. had caused injury to his brother by hurling bomb on him for which a Police Case was registered. He further claimed that on 05.08.1992 at about 7.00 P.M., Sk. Batto, Sk. Khalique, Sk. Sajim and Sk. Kalamul came to his house and pressurized to withdraw the case, but informant did not buckle upon the pressure of the aforesaid persons and in retaliation to the above stated incident, the F.I.R. named accused having made unlawful assembly committed the murder of his brother.

4. On the basis of above stated fardbeyan of P.W.4 Nathnagar P.S. Case No. 169 of 1992 for the offences punishable under Sections 147, 148, 149, 448, 341, 342 and 302 of the Indian Penal Code was registered on 06.08.1992 and on the same day at 7.30 A.M., formal F.I.R. was drawn up against the appellants, but the formal F.I.R. and fardbeyan were put up before the learned C.J.M. on 10.08.1992.

5. P.W.10 Deolal Ram took the charge of investigation and after completion of investigation, he submitted Chargesheet against the appellants and others. Learned trial Court took cognizance of the offences and committed the case of the appellants and others to the Court of Session. The appellants and Sk. Salim were put on trial and, accordingly, they stood charged



for the offences punishable under Sections 302/149, 302, 148, 147 of the Indian Penal Code and Section 27 of the Arms Act. The appellants denied the charges and claimed to be tried.

6. In course of trial, prosecution examined, altogether, 11 prosecution witnesses and also got exhibited some documents. The statement of appellants was recorded under Section 313 of the Cr.P.C. in which they reiterated their innocence. The defence also got examined two defence witnesses and from perusal of statements of defence witnesses recorded under Section 313 of Cr.P.C. as well as trends of cross-examination of prosecution witnesses, it would appear that the defence of appellants was total denial of the prosecution version.

7. Learned trial Court having evaluated the prosecution evidences convicted and sentenced the appellants basing his finding, particularly, on the testimonies of P.W.7 and P.W.8. The appellants being aggrieved by the impugned Judgment preferred three separate appeals, which have been heard together, as we have already stated.

8. Learned Sri Ansul, Advocate appearing in Criminal Appeal (DB) No. 120 of 1995 assailed the impugned Judgment of conviction and sentence order arguing that except P.W.7 and



P.W.8, not a single prosecution witness has supported the prosecution case, rather, almost all the prosecution witnesses except P.W.7 and P.W.8 stated that they could not identify the assailants. He further submitted that P.W.7 is the wife, whereas P.W.8 is the daughter of the deceased and both the above stated witnesses made contradictory statements and from perusal of testimonies of the aforesaid prosecution witnesses coupled with other circumstances, it is apparent that both the aforesaid prosecution witnesses had not seen the alleged occurrence.

9. Learned Mr. Ansul, Advocate, further, submitted that P.W.7 and P.W.8 improved their statements in course of trial and as a matter of fact, they had not claimed themselves to be eye witnesses before the investigating officer. He, further, submitted that the prosecution also failed to prove the place of occurrence, because in fardbeyan, the informant claimed that deceased sustained injuries at his Veranda, but dead body of deceased was found in the courtyard and to save the aforesaid contradiction, P.W. 7 improved her story before the trial court saying that deceased was dragged by the accused persons up to courtyard and, thereafter, the appellants assaulted him by means of various weapons. He submitted that the aforesaid improvement has been made to cover up the above stated lacuna



of the prosecution case.

10. He further, submitted that P.W.7 and P.W.8 claimed to have identified the appellants and witnessed the occurrence in the light of lantern, but no lantern was seized by the investigating officer nor he found any lantern over the place of occurrence. He, further, submitted that P.W.7 claimed that she as well as her daughter were sleeping on two different cots, but the I.O. found only one cot lying at the Veranda and no blood was found on the cot which was lying on the Veranda, rather, the I.O. found no sign of dragging on the bed-sheet of the above stated cot. He further submitted that no question regarding the assault on P.W.7 was asked from the appellants in course of recording their statements under Section 313 of the Cr.P.C. and, therefore, the aforesaid circumstance goes to show that P.W.7 was not present on the place of occurrence, when occurrence took place. He further submitted that there are other contradictions in the testimonies of P.W.7 and P.W.8 as P.W.7 claimed that firing was made five times, but only three injuries were found on the person of deceased. He submitted that if all the above stated circumstances are taken into consideration it can be said without any hesitation that P.W.7 and P.W.8 had not witnessed the alleged occurrence.



11. Learned Shri Baxi S.R.P. Sinha, Senior Advocate, supported the above stated submissions of Mr. Ansul, Advocate but added that the learned trial court committed error in appreciating the prosecution evidence in its right perspective and that is the reason the learned trial court came to wrong conclusion

12. On contrary, learned Additional Public Prosecutor supported the impugned Judgment of conviction and sentence order arguing that P.W.7 and P.W.8 very clearly stated before the trial court that the appellants committed murder of the deceased and the Postmortem report of deceased also corroborates the claim of P.W.7 and P.W.8. He, further, submitted that even if it assumes that some minor contradictions have occurred into the depositions of P.W.7 and P.W.8, then also, the testimonies of P.W.7 and P.W.8 cannot be discarded only on the basis of minor contradictions. He further submitted that the prosecution, successfully, proved its case beyond all shadow of reasonable doubts and, as a matter of fact, there are clinching evidences available on the record to prove participation of the appellants and, therefore, all the above stated appeals are liable to be dismissed.

13. Having heard the rival contentions of all the



parties, we went through the record along with lower court's record. The only question arises for determination as to whether reliance can safely be placed upon the testimonies of P.W.7 and P.W.8 and by placing reliance on the testimonies of P.W.7 and P.W.8 the impugned Judgment of conviction and sentence order can be confirmed or not.

14. As we have already stated that in course of trial, the prosecution examined, altogether, eleven prosecution witnesses and also got exhibited some documents. Out of the aforesaid eleven prosecution witnesses, P.W.1 Md. Sheikh Sainul, P.W.2 Bibi Alisha, P.W.3 Bibi Noor Jahan, P.W.4 Md. Sahem have been declared hostile, whereas P.W.5 Bibhushan Yadav is witness of seizure and this witness has stated nothing either about the alleged occurrence or about the participation of the appellants in the alleged occurrence. P.W.6 Prasadi Yadav has been tendered and this witness has also stated nothing about the alleged occurrence. P.W.9 is a doctor who held postmortem examination on the dead body of the deceased, whereas P.W.10 is the Investigating Officer of the case. P.W.11 is another Doctor who has examined P.W.3 and P.W.4 and proved their injury reports.

15. The star witnesses of the prosecution are P.W.7 and



P.W.8. Admittedly, P.W.7 Bibi Hasina is the wife of deceased whereas P.W.8 Anirunissa is the daughter of the deceased. P.W.7 and P.W.8 supported the prosecution case in course of trial but before dealing with the depositions of P.W.7 and P.W.8, we would like to briefly discuss the statement of those prosecution witnesses, who have been declared hostile.

16. P.W.1 Md. Sheikh Sanul is the nephew of deceased. This witness stated that in the mid-night of alleged occurrence, he was sleeping in his house and heard alarm raised by P.W.4 and came to know that deceased Sk. Riyasat was killed. He further claimed that he went near the place of occurrence and found Sk. Riyasat dead. He also claimed that nobody was present near the dead body of deceased when he reached there. This witness denied to have made any statement before the police. The prosecution drew the attention of this witness towards the statement recorded by P.W.10 in course of investigation, but this witness flatly denied to have made any statement before P.W.10. On being cross examined by defence, this witness admitted that the matrimonial home (SASURAL) of deceased was at Bisunpur and at the time of alleged occurrence, wife of deceased (P.W.7) as well as her daughter (P.W.8) were at Bisunpur. This witness further claimed that in the next morning



of the alleged occurrence, he went Bisunpur and gave information to P.W.7 and P.W.8 about the alleged occurrence. This witness also admitted that deceased had enmity with several persons.

17. P.W.2 Bibi Alisha is the daughter of P.W.4. This witness claims that in the mid-night of the alleged occurrence, deceased was killed and at that time she was in her house. She further claimed that she heard alarm raised by her father P.W.4 and having heard the noise, she went near the deceased where she saw the deceased lying dead. She further claimed that she had not seen any other person near the place of occurrence. This witness denied to have made any statement before the Police in course of investigation. This witness admitted that the deceased was her own uncle. This witness also stated that at the time of alleged occurrence, her aunt (P.W.7) as well as her cousin sister (P.W.8) were at Bisunpur and P.W.7 and P.W.8 came at their house when P.W.1 went to take them back.

18. P.W.3 Bibi Noor Jahan is wife of P.W.4 as well as elder sister-in-law of the deceased. This witness claimed that on the alleged date of occurrence, deceased was sleeping at his Verandah, where he was killed. She further stated that at the time of alleged occurrence, she was sleeping at her house and



heard the sound of three or four rounds of firing and also heard the cry of her husband (P.W.4). She further claimed that her daughter (P.W.2) was sleeping by her side. This witness claims that when she reached near the deceased, she saw the appellants fleeing from there. She further admitted that when she as well as her husband made attempt to save the deceased, she as well as her husband also sustained injury, but she could not identify any of the assailants. She also failed to say as to by which weapon she sustained injury. She also denied to have made statement before the Police. This witness admitted in her cross-examination that at the time of alleged occurrence, P.W.7 and P.W.8 had gone to Bisunpur and after the alleged occurrence P.W.1 went to Bisunpur to take them back.

19. P.W.4 Md. Sahem is the informant as well as full brother of deceased. This witness states that deceased Riyasat was killed by the miscreants in the night of alleged occurrence. This witness also claims that the deceased as well as this witness had joint house and courtyard, but rooms were separate. This witness claims that having heard the sound of firing, he woke up and while he was going towards the place of occurrence, the miscreants assaulted him but he could not identify the assailants as there was complete dark. This witness



further states that when his wife P.W.3 came to his rescue, she also sustained injury. This witness further states that he as well as his wife got treatment at Nathnagar Hospital. This witness further states that after the occurrence, Police came in his village but police did not record his statement, rather, the police took his thumb impression on a plain paper. This witness on being cross-examined by the prosecution denied to have made statement before the police. This witness admitted that the deceased was a criminal and had animosity with several persons. This witness also admitted that at the time of alleged occurrence, the wife and daughter of deceased were not present in village rather the wife of deceased along with her daughter had gone to her parental home and after the occurrence, he sent P.W.1 to take wife and daughter of the deceased back and, thereafter, wife and daughter of deceased came in the next morning of alleged occurrence. This witness was cross-examined by the court and this witness, specifically, stated that there was complete dark over the place of occurrence and nothing was visible due to darkness. This witness further stated that three round firing was made. This witness further stated that when he sustained injury, he raised alarm which attracted his wife, who came running there, but she was also assaulted by the



miscreants.

20. It is pertinent to note here that P.W.4 is the informant and on the basis of his Fardbeyan, Nathnagar P.S. Case No. 169 of 1992 was registered and the law was set in motion, but this witness, completely, demolished the prosecution case by not supporting the prosecution case before the trial court. It is also pertinent to note here that P.W.1 to P.W.4 all are the family members of deceased and they were residing in the same house in which the deceased was residing at the time of alleged occurrence. Furthermore, it is obvious from perusal of statements of P.W.1 to P.W.4 that all the aforesaid prosecution witnesses, specifically, stated that at the time of alleged occurrence, P.W.7 and P.W.8 had gone to village Bisunpur and they returned to the village in the next morning of the alleged occurrence, when P.W.1 went to take them back.

21. P.W.7 Bibi Hasina is the wife of deceased. This witness admitted in her deposition that her parental home is at Bisunpur after murder of her husband, she started residing at her parental home. This witness claims that at the time of alleged occurrence, she was at village of her-in-laws. This witness further claims that in the night of alleged occurrence, her husband along with her was sleeping on a cot at Verandah,



whereas her daughter Anirunissa (P.W.8) was sleeping on another cot by her side. This witness further claims that Mubarak, Sahamat, Khalil, Kalamul, Kalim, Safeek and Mattu came there and Mubarak gave garansa blow to her husband, who woke up raising alarm. She further claims that she as well as her daughter also woke up. She also claims that Mubarak, Sahmad and Khalil made five round of firings, whereas Mattu and Salim were holding lathi and furthermore, she claims that Mubarak started assaulting her husband by means of rifle. She claims that a lantern was burning at her Verandah and in the light of aforesaid lantern, she identified the appellants and others. This witness claimed that apart from firing the appellants had assaulted the deceased by means of dagger and garansa, but she could not say who gave dagger blow to deceased. On being cross-examined, this witness claimed that at west of Verandah of her house, she along with her daughter and her husband were sleeping. This witness further admitted that her husband sustained injury while he was sleeping on the cot. She further claimed that her husband died near the OLT of her Verandah and she further claimed that her husband was dragged from cot to OLT of Verandah by the appellants. This witness also, specifically, stated that her husband sustained injury on his head



by means of garansa, when he was on the cot. This witness further claimed that her husband was pulled down on the ground and after that firing was made upon him. This witness, further, admitted that P.W.4 is her elder brother-in-law and towards south side of the same, Verandah P.W.4 was sleeping. This witness further admitted that when she woke up, she saw P.W.4, who had come there on the cry of deceased. This witness further admitted that it was appellant Mubarak, who first gave garansa blow and, after that firing was made and dagger was used in causing injury to her husband. This witness also admitted that she was assaulted by butt of gun as a result whereof, she became unconscious. This witness, fairly, admitted that except the light of lantern, there was no any other source of light. This witness further stated that before arrival of co-villagers, the appellants fled away from there, but she failed to disclose the name of villagers who had assembled on the place of occurrence after the alleged occurrence. This witness, further, admitted in her cross-examination that since last five years litigation in respect of lands was going on between her husband as well as appellants. This witness also stated that prior to the alleged occurrence, appellants Mattu, Salim, Khalil and Kalamul had hurled bomb on her husband for which a case was instituted, but she could



not say what happened to that case. This witness failed to remember as to whether she had made statement before the police regarding assault of deceased by Kalamul by means of garansa. However, this witness admitted that P.W.10 recorded her statement in next morning between 8 A.M. to 9 A.M. . This witness denied the suggestion of defence that at the time of alleged occurrence, she was at her parental home and P.W.1 had taken her back after the alleged occurrence.

22. P.W. 8 Anirunissa is the daughter of the deceased and it is obvious from perusal of her deposition that she was aged about 12 years when she deposed before the trial court. Her deposition was recorded on 18.09.1994 and, admittedly, the alleged occurrence took place between 5/6.08.1992. Therefore, it appears that at the time of alleged occurrence, she was a minor girl aged about 10 years. The learned trial court tested her competency and before recording her deposition, put several questions to her and found her competent to depose in the case and, thereafter, recorded her deposition. This witness states that the occurrence took place in the mid night and, at that time, she was sleeping at her Verandah along with her father (deceased), mother (P.W.7) and two younger brothers. She, further, claims that she woke up having heard the cry of her father and saw that



appellant Mubarak gave Garasa blow on the head of her father, who fell down on the ground from cot and, after that, Mubarak, Kalamul and Khalique assaulted her father by means of gun and, similarly, Sajim assaulted her father by Garasa. She, further, claims that her father was caught by all the appellants and Khalique gave dagger blow on the abdomen of her father and, thereafter, all the appellants fled away from there. She, further, claims that prior to the alleged of occurrence, appellants Kalamul and Khalique had hurled bomb on his father. She claimed to have identified all the appellants in dock. On being cross-examined by the defence, she admitted that P.W.4 is her uncle and her uncle along with his family was residing in the same house in a separate room but courtyard of her father as well as her uncle was joint. She, further, admitted that she along with her mother used to go to village-Bisunpur, District Munger to meet her maternal grandfather and in the year 1992, she had gone to Bisunpur for several times. She further admitted that whenever she as well as her mother got massage of her fallen, she along with her mother returns to her village. This witness also admitted that there were two cots at her Verandah on the alleged date of occurrence and she also admitted that in the east side of her Verandah, there was courtyard. She also admitted



that in mid night of alleged date of occurrence, she heard cry of her uncle, aunt, mother as well as her younger brothers and having heard the aforesaid cry, she woke up. She, further, admitted that she saw her father lying in pool of blood. She also claimed to have seen the appellants fleeing from the place of occurrence. The attention of this witness was drawn towards her previous statement recorded by the police, which is evident from perusal of paragraph 15 of her deposition. This witness also admitted that there was no dispute between her father and uncle but there was land dispute between the appellants and her father.

23. The perusal of depositions of P.W.7 and P.W.8 goes to show that both the above stated prosecution witnesses claimed themselves to be eye witness of the occurrence and both the above stated witnesses, specifically, stated that it were the appellants, who assaulted and committed the murder of deceased. Furthermore, both the aforesaid witnesses described the manner, in which the appellants allegedly committed the murder of deceased. It is pertinent to note here that both the above witnesses claimed that at the time of alleged occurrence, deceased was sleeping on a cot at his Verandah and he received Garasa injury, while he was sleeping on the cot. Furthermore,



both the aforesaid witnesses stated that there were two cots at Verandah at the time of alleged occurrence.

24. P.W.10 is the Investigating Officer of this case. This witness claims that on 06.08.1992 at about 3.30 A.M., Yadu Paswan, Chowkidar of village-Bhatoria came at the police station and gave information that murder had taken place in village-Bhatoria. This witness claims that S.I. V.K.Srivastava entered the sanha of the aforesaid information and, thereafter, he along with S.I. V.K.Srivastava, ASI, Indradev Prasad as well as armed forces proceeded to the place of occurrence, where he as well as other police officials reached at 04:00 A.M.. This witness further claims that he recorded the fardbeyan of P.W.4. Furthermore, this witness states that he sent the fardbeyan of P.W.4 to the police station for registration of the case and, accordingly, formal F.I.R. was prepared. He further claims that he recorded the further statement of P.W.4 and inspected the place of occurrence. This witness describes the place of occurrence at paragraph-2 of his deposition. This witness states that the place of occurrence is the house of P.W.4 situated at village-Bhatoria. This witness also claims that in the east side of the aforesaid house, there was courtyard and, after that, there was boundary wall and in the north-east side of the aforesaid



boundary wall, there was a door but the aforesaid door had no plank. This witness further stated that in the west side of the aforesaid courtyard, there were two rooms and the Verandah was attached with the aforesaid two rooms. This witness further claims that he found a cot lying on Verandah and in the east side of the aforesaid cot, he found the dead body of the deceased Sheikh Riyasat. He noticed that there were several injuries and the intestine of deceased Sheikh Riyasat had bulged out. He also found copious blood on the place of occurrence. He also found two empty cartridges. He seized the cot and blood and prepared the seizure list. He further claims that he prepared the inquest report in presence of the independent witnesses and sent P.W.4 for treatment after preparing his injury report and, similarly, he also prepared injury report of P.W.3. This witness also states that he recorded the statements of Sheikh Sanul (P.W.1), Bibi Noor Jahan (P.W.3) Bibi Anirunissa (P.W.8) Bibi Hasina (P.W.7), Bibi Alisha (P.W.2) and other witnesses and after completion of investigation, he submitted charge-sheet against the appellants. The attention of this witness was drawn towards the statements of P.W.1 to P.W.4 recorded by him in course of investigation and this witness stated before the court about the statements made by P.W.1 to P.W.4 before him in



course of investigation. This witness admitted in his cross-examination that he got information about the murder from Chowkidar at 03:30 A.M. and entered the aforesaid information in the register but the above stated entry was not brought before the court or before this witness at the time of his cross-examination. This witness, specifically, admitted at paragraph-16 of his cross-examination that he had found only one cot lying at Verandah. He further admitted that he did not find any mark of violence on the bed-sheet lying on the above stated cot. This witness further stated that he had found lantern on the place of occurrence but he did not seize the aforesaid lantern. This witness, further, admitted that he did not find any blood either on the cot or on the bed sheet lying on the said cot. He, further, admitted that he found the dead body of the deceased lying adjacent to the above stated cot. He further admitted that he did not record the statements of neighbours of the deceased as they were not available at the time of his inspection. This witness admitted that he had recorded the statement of P.W.7 on 06.08.1992 but P.W.7 had not claimed before him that it was appellant Mubarak, who shot fire on the deceased and she had also not claimed before him that the appellant Mubarak had assaulted the deceased by means of Garasa. Further, this witness



stated that P.W.8 had not claimed herself an eye witness of the occurrence, while giving her statement under Section 161 of the Cr.P.C.

25. P.W.9 is Doctor, who held postmortem examination on the corpus of the deceased on 06.08.1992 and found following injuries:

(i). One incised wound 3" x 1½" x bone deep was present on left side of head on parietal region.

(ii). One incised wound 3" x 1¼" x 1/2" was present on outer aspect of left arm just above elbow joint.

(iii). One wound of entry with lacerated and everted margin 5" x 3" was present on upper and outer aspect of left arm. There was fracture of shaft of left humerus. One wound of exit 4½" x 2" in middle of left arm at inner aspect with everted and lacerated margins were present.

(iv). One incised wound 7" x 1½" x 1½" was present on right side of back above waist.

(v). One vertical incised wound 4" x 1" x 1/2" was present on upper part of right arm.

(vi). One wound of entry 2" x 1" x muscle deep was present on left side of back 2" below interior angle of scapula. Margins were inverted. One wound of exit 1½" x 1/4" was



present on right side of back 4" below the interior angle of right scapula. The margins were everted.

(vii). One incised wound 1" x 1/4" x 3/4" was present on upper and outer aspect of right thigh near its muscle.

(viii). One wound of entry 2" x 1 1/2" was present on left side of upper part of abdomen. The margins were inverted. Loops of intestine were coming out of this wound. The loops of intestine, stomach and liver were perforated at several places and several pellets were found embedded in soft tissues which were recovered and were handed over in sealed cover.

This witness opined that injury no. (iii), (vi) and (viii) were caused by firearm, whereas injury no. (i), (ii), (iv), (v) and (vii) were caused by sharp cutting weapon. He also stated that the deceased died within six to sixteen hours since the time of postmortem of examination. Moreover, the death of deceased is not in dispute. It is also not in dispute that the deceased died due to injuries caused to him by firearm as well as sharp cutting weapons.

26. Since the death of deceased is admitted and it is also admitted that several injuries said to be caused by firearms as well as sharp cutting weapons were found on the person of the deceased and the prosecution witnesses No. P.W.7 and P.W.8



claim that it were appellants, who inflicted the above stated injuries to the deceased resulting his death, now, it has only to be seen as to whether prosecution succeeded to prove the above stated claim of P.W.7 and P.W.8 beyond all shadow of reasonable doubts or not.

27. We have already discussed the statements of P.W. 7 and P.W.8. After perusing the statements of P.W.7 and P.W.8, we find that both the aforesaid prosecution witnesses claimed that they along with deceased were sleeping at Verandah and in the mid night, the occurrence took place. It is obvious from perusal of statement of P.W.10 that P.W.10 got information about the killing of a person from local Chowkidar at 3.30 A.M. and having entered a snaha, he reached at the place of occurrence at about 4:00 A.M, i.e, within very short span of time and P.W.10 claimed to have recorded fardbeyan of P.W.4 at about 04:30 A.M. on 06.08.1992. According to P.W.7 and P.W.8, they were present on the place of occurrence and they were sleeping with the deceased at the time of occurrence. P.W.7 and P.W.8 claim that they saw the occurrence since its inception, but P.W.7 did not give her fardbeyan to P.W.10, rather it was P.W. 4, who gave his fardbeyan to P.W.10, particularly, in the circumstance, when P.W.7 claims in her deposition that P.W.4 was sleeping in



another room at the time of alleged occurrence. It is the case of the defence that P.W.7 was not present in her house at the time of alleged occurrence, rather she along with P.W.8 had gone to village-Bisunpur, District-Munger, and having got information about the murder of her husband, she along with P.W. 8 came in morning of 06.08.1992. P.W.7 has admitted in her deposition that her statement was recorded by P.W.10 between 8 to 9 A.M. on 06.08.1992. Furthermore, it is the prosecution case that P.W.3 and P.W.4 had sustained injury when they came in rescue of the deceased. The prosecution has brought injury reports of P.W.3 and P.W.4 and both the aforesaid witnesses admitted in their depositions that they had sustained injury when they tried to save the deceased. P.W.7 admitted in her cross-examination that she was pushed by the appellants and was assaulted by butt of gun when she went in rescue of her husband and having sustained injury by butt of gun, she became unconscious, but it is surprising enough that no injury report of P.W.7 was brought by the prosecution before the trial court nor P.W.7 stated before the Investigating Officer (P.W.10), when her statement under Section 161 of the Cr.P.C. was recorded to have sustained injury in the alleged occurrence.

28. Therefore, it appears that P.W.7 had not sustained



any injury in the alleged occurrence and, for the first time, she claimed to have sustained injury at the time of alleged occurrence, when her deposition was recorded before the trial court. It is not in dispute that P.W.7 is the wife of the deceased and, therefore, had she been with the deceased at the time of alleged occurrence, she would have certainly made attempt to save her husband but there is nothing in the entire prosecution evidence that she made attempt to save the life of her husband and, therefore, the aforesaid circumstance reflects that P.W.7 was not present at the place of occurrence when the occurrence took place. Furthermore, P.W.7 was not present on the place of occurrence when occurrence took place is corroborated by this fact that, admittedly, P.W.10 reached at the place of occurrence at 4:00 A.M. on 06.08.1992 and had P.W.7 been present at the time of arrival of P.W.10, she would have certainly made her fardbeyan before P.W.10 because P.W.7 claims that she was sleeping with the deceased from the very inception of the occurrence and non recording of the fardbeyan of P.W.7 by P.W.10 reflects that when P.W. 10 reached on the place of occurrence, P.W.7 was not present there and that is the reason, her statement was recorded by P.W.10 between 8 A.M. to 9 A.M. Furthermore, it is clear from the evidences adduced on



behalf of the prosecution that alleged occurrence took place in the mid night and there was complete dark at the time of alleged occurrence. Although, P.W.7 and P.W.8 claimed to have seen the occurrence and to have identified the appellants in the light of lantern and P.W.10 also claimed that he found lantern on the place of occurrence but, admittedly, P.W.10 did not seize the aforesaid lantern. Therefore, the above stated claim of P.W.7 and P.W.8 appears to be doubtful. Apart from this, P.W.7 and P.W.8 claimed that the deceased as well as they were sleeping on two different cots but the I.O. found only one cot lying at the Verandah. If all the above stated facts are taken together for consideration, then the only conclusion comes that P.W.7 and P.W.8 were not present at their house when the occurrence took place. Moreover, P.W.1, P.W.2, P.W.3, P.W.4, P.W.7 and P.W.8 have stated that the deceased sustained injury, while he was sleeping on a cot at Verandah. P.W.10 claims that a cot was lying at Verandah and the dead body of the deceased was found lying adjacent to the aforesaid cot. The above stated statements of prosecution witnesses go to show that the deceased was killed at Verandah and his dead body was lying at Verandah but the inquest report, which has been marked as Ext.5, goes to show that the dead body of the deceased was found lying in the



courtyard of the deceased.

29. No doubt, P.W.10 claims that in the east side of Verandah, there was courtyard but even if it is accepted that the courtyard was adjacent to Verandah, then also, the prosecution could not succeed to establish the place of occurrence beyond all reasonable doubts because according to the prosecution witnesses, the occurrence took place at Verandah, whereas dead body of deceased was found in the courtyard. Therefore, in the aforesaid circumstance, it appears that the deceased was not killed in the manner, as claimed by P.W.7 and P.W.8.

30. It is well settled principle of law that the prosecution has to prove its case beyond all shadow of reasonable doubts and even if slightest doubt arises in the claim of the prosecution, the accused cannot be convicted.

31. In the present case, we have discussed and evaluated the prosecution evidence and we find that there are several infirmities in the prosecution case and in our considered opinion, the prosecution could not succeed to prove its case beyond all shadow of reasonable doubts and, therefore, in the aforesaid circumstance, appellants are entitled to get the benefit of doubt.

32. On the basis of aforesaid discussions, all the above



stated Criminal appeals are allowed and the impugned Judgment of conviction and sentence order are, hereby, set aside. The appellants are acquitted of the charges. The appellants are on bail. They are discharged from the liabilities of their respective bail bonds.

(Hemant Kumar Srivastava, J)

(Rajendra Kumar Mishra, J)

Manish/P.S.

AFR/NAFR	N.A.F.R.
CAV DATE	N.A
Uploading Date	15.05.2019
Transmission Date	15.05.2019

